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[Note.—An asterisk (*) at the commencement of a speech indicates revision by the Member.]

II.—MESSAGE FROM THE ASSEMBLY.

MR. PRESIDENT:—“ I have to announce the following message which I have received from the Hon. the Speaker of the Madras Legislative Assembly :—

‘ In accordance with Rule 94 of the Madras Assembly Rules I transmit a copy of the Madras Hindu Bigamous Marriages Prohibition and Divorce Bill, 1947 (L.A. Bill No. 6 of 1947) as passed by the Assembly on the 10th September 1948 and signed by me for the concurrence of the Council.’ ”

NON-OFFICIAL BILL.

III.—THE MADRAS HINDU BIGAMOUS MARRIAGES (PREVENTION AND DIVORCE) BILL, 1947 (L.A. BILL No. 6 OF 1947).

SRI N. RANGA REDDI:—“ Mr. President, Sir, I move—

that the Madras Hindu Bigamous Marriages (Prevention and Divorce) Bill, 1947 (L.A. Bill No. 6 of 1947), as passed by the Assembly be taken into consideration.”

“ Before I deal with the principles of this Bill, Sir, I would like to thank the Hon. the Leader of the House for having converted this official day into a non-official day and for having given us an opportunity to discuss the provisions of this Bill as early as possible.

“ I would now like to mention in short the history of the Bill. This Bill was sponsored by Sri A. Kaleswara Rao, a member of the Legislative Assembly. The Bill was given notice of in December 1946 and the Congress Party decided to refer it to public opinion. In March 1947 it was referred for public opinion for two months. Public opinion was strongly in its favour. Then in October 1947 it was referred to a Select Committee presided over by Dr. Subbarayan, the then Law Minister of the Government of Madras.”

MR. PRESIDENT:—“ Had it no history in 1937 and 1938? ”

SRI N. RANGA REDDI:—“ I do not know anything, Sir. This is so far as Mr. Kaleswara Rao has given me the particulars. The previous Law Minister, Mr. Bhashyam, was also a Member of the Select Committee. In February 1948 the Select Committee approved the Bill with certain modifications. It reduced the court fee from Rs. 50 to Rs. 10 and there were a few verbal alterations which were accepted by the Member in charge of the Bill. The Bill as passed by the Assembly has come up before this Council for discussion.

“ I submit, Sir, that the main principles of this Bill are two and they are the provisions for the prohibition of bigamous marriages and the provisions for divorce. Before I deal with these two principles, Sir, I would like to explain the present position of Hindu

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Law regarding these two questions. According to Hindu Law as it is observed at present a male can have any number of wives whereas a woman can have only one husband and further the marital tie that has been entered into is considered sacred. (Interruption.) I am referring to the communities like the Brahmans, the Vaisyas, the Kshatriyas and other high class Hindus. I am not thinking of the other tribal communities who have got different customs and who have got different kinds of marriages. I am thinking of those communities which are mainly governed by the Hindu Law. Of course there is the customary law. I am not concerned with that. I am concerned with the Sastric Hindu Law. According to the principles of Hindu Law a male can have any number of wives and the marital tie cannot be severed during the lifetime of either of the spouses. The marital tie continues until death and it can never be severed under any condition. These are the two principles which this Bill seeks to revise.

“ The principle regarding the prohibition of bigamous marriages has been attacked by the orthodox Hindu public opinion. It is said that it is an ancient and hoary custom and that it has been observed for a long time and the prohibition interferes with the religious observances of the Hindus. Therefore, they say that this Bill should not be introduced or the custom should not be modified by the provisions of the Bill. Sir, the principle of monogamy is not a new one. It was known to the ancients and it was also practised in ancient days. For the edification of the hon. Members of the House, I would like to read a passage from Mayne's Hindu Law as revised and edited by the late Sri S. Srinivasa Ayyangar, a brilliant advocate and some time Advocate-General to the Government of Madras.

“ The rule was monogamy and in very exceptional cases bigamy was resorted to. I submit in these days when we want to introduce monogamy we must consider whether we are introducing any innovation in the present law. No doubt the Hindu society has undergone many changes and it is very necessary that we should also change our law in consonance with public opinion. Then, Sir, the law is never static. It is dynamic. As probably this House is aware some thousands of years ago even amongst the high class communities, there was what was called the system of polyandry where a woman was allowed to marry more than one husband. That system has died out and it has become obsolete. Even during the time of Draupadi when she was asked to be the wife of the Pandavas the king, her father, asked: ‘ How is it you fellows want to marry the same girl. It is opposed to our sense of justice. (Dr. Syed Tajuddin Sahib Bahadur: ‘ How did it die? ’) It died because people did not like it. So I am saying that some laws which were not wanted died a natural death. The laws are never permanent. They are meant to reflect public opinion. Now the time has come when we have to change this law of polygamy into one of monogamy. This point has been

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raised by many women's organizations and especially the All-India Women's Organization has pressed the question that bigamy should be introduced"

MR. PRESIDENT :—" Bigamy should be introduced? Do you mean that bigamy should be prohibited? "

SRI N. RANGA REDDI :—" Prohibition of polygamy, Sir"

MR. PRESIDENT :—" Bigamy means two wives or two husbands? "

SRI N. RANGA REDDI :—" Bigamy means one man and one wife." (Laughter.)

DR. V. K. JOHN :—" Are we to accept this statement of law, Sir? "

SRI N. RANGA REDDI :—" I am sorry, Sir, I meant monogamy. It is a slip of the tongue. I am sorry. I meant that monogamy ought to be introduced and bigamy should be prohibited. It is true that some friends would attack this as a thing which has been imitated from the West. As I submitted, Sir, this is not a thing which has been imitated from the West. This is a thing which has been practised in ancient times and it is now in actual practice also. I would submit that cases are very rare when a man marries more than one wife; though there is a provision that a man can marry more than one wife no one marries more than one wife. It is only under very extraordinary circumstances that a man marries more than one wife.

" It may be that some hon. Friends may contend that if the first wife has no children born of her, for the sake of the progeny, the man may marry a second wife, or for some other reason, say for the sake of property, a man marry more than one wife. Sir, the point here to be considered is whether a man should have the right to marry a second wife, especially when it adds to the discomfort or misery of the woman that is concerned. I submit this is a point which we should all recognize. There is no danger also in recognizing this thing because it is recognized by all the civilized countries in the present day.

" Then, Sir, I would like to deal with the provision for divorce. Some people criticized that it is a cheap imitation of the West. But, I would like to submit to hon. Members that this has also been practised in India in olden days. Authorities on Hindu law also have recognized it. In the Mayne's Hindu Law, it is stated that so far as Hindu law is concerned, there are eight forms of marriage which are recognized, out of which four forms are approved ones and the other four forms are not approved forms of marriage. So far as the approved forms of marriage are concerned there was a provision for divorce and if the husband or wife did not agree for some reason or other, divorce was granted even in those

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days. Our Sashtas also say that if a marriage is contracted by an impotent person or an imbecile, such a marriage is void and the person who has been so married can be taken away from the husband or wife, as the case may be, and married to another person. I mean to say that even in those days, it was provided that if there were some physical defects or physical incapacity on the part of the husband, it would give a valid reason for the wife to marry again. Therefore, I submit that on this question of divorce also, it need not be thought that it is a new thing or that it is not known to us. The only thing is the times have now recognized the need for such a provision though there was no need for such a provision some years ago. Therefore, Sir, I think this House will accept that this principle of divorce should be introduced in Hindu Law.

Then, Sir, it is said that if a provision for divorce is made available in Hindu Law, divorces will be very cheap and that we will be disrupting the whole Hindu social structure and that we will be destroying the system which has been in existence for so many centuries. They may also state that the Hindu social structure has remained unchanged and has withstood the onslaught of foreign invasions because of this Hindu marriage institution. But, Sir, I must submit that conditions have changed and it is very necessary that in the interests of Hindus, this principle of divorce should be introduced in our Hindu law. One thing I would like to say in this connexion. Simply because there is provision for divorce, it does not follow that very many people will take advantage of it. I would also like to mention that so far as the Islamic law is concerned, there is a provision for divorce. A husband can divorce his wife in a very short time. He may pronounce the word 'talak' three times and then he gets a divorce."

DR. SYED TAJUDDIN SAHIB:—"It is not so easy."

SRI N. RANGA REDDI:—"The hon. Member can explain it when the opportunity comes to him. For the present, he can reserve his remarks. What I say is there is a provision for divorce in Islamic law. Does it follow that divorces among Muslims are resorted to very often? Sir, this provision for divorce might benefit only a few people in this Province. But, even if it benefits only a few persons in this Province, still it goes a long way in relieving the misery and unhappiness of those unfortunate wives who may not like to live in the same house with the husband because he may have another wife or a concubine or the husband may be a leper or suffering from some incurable venereal disease and so on. Under those circumstances, I ask, is she to put up with or is she to endure all those difficulties because she is a Hindu wife? Therefore, Sir, there is need for a provision for divorce. If there had been a provision for divorce, in some of these cases, the wife might have been living separately. I also submit that

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even though a provision for divorce has not been made under Hindu law, a provision for separate maintenance has been provided for. There is what is called the Hindu Wives' Right to Separate Maintenance Act which was passed in the year 1946. It is an All-India Act under which a wife can file a suit and can get a decree for separate maintenance and can live separately. When that right has been recognized by an All-India Act, you will have to consider whether there is any danger in severing the tie and allowing the wife to marry another person under certain conditions. After all the number of such persons who will be divorced and who will marry again will not be very large. I will give one instance. The Hindu Widow Remarriage Act was passed. It is now on the Statute Book. It has been convicted in the best interests of the Hindu women. But when that Act was sought to be placed on the Statute Book, there was a strong opposition from the orthodox section of the Hindu community on the ground that it was conflicting with the Hindu sentiments and that it violated the principles of Hindu religion. But, still the Act was passed and placed on the Statute Book. Some of our Hindu social workers were able to reform the conditions of widows by means of that Act. But, what do we see to-day? Not many widow remarriages are taking place. Likewise, even though provision for divorce is made, it is not as if every woman will seek for divorce and get married to another husband. Only a few people will do like that—some young girls on whom sometimes these marriages are forced may seek recourse to this provision. I need not go into all those details at this stage. What I want to say is that every woman who seeks a divorce does not do so with the intention of marrying another person. The Widow Remarriage Act is on the statute book but still a widow is not able to get a husband. Similarly it may be difficult for a divorced woman also to get a husband. Therefore, it is wrong to say that every woman who gets a divorce gets it simply for marrying another person. In some cases, divorce is necessary, so that the woman can live a happy life. Otherwise, some of those unlawful sexual unions which have come into existence will stand in the way of recognition of the offspring. Therefore, I submit that this provision for divorce is very necessary. It is a thing which has been in existence centuries ago though it is not in practice at present.

“ Now, Sir, this principle of monogamy, we are not introducing for the first time amongst the Hindus. In Bombay, already there is an Act prohibiting bigamy. No doubt in Madras, this Bill was introduced by Sri A. Kaleswara Rao some time in 1916 earlier than the Bombay Act. But because it has to be piloted by a non-official member, time could not be got for passing this Bill in a short time through the Assembly. Therefore, it has taken so much time to come before this House. So far as the Bombay Act is concerned, that Bill was originally sponsored by Mr. Lilavathi Munshi. It was later on taken up by the Government of Bombay and it was placed on the statute book. Sir, we are trying to adopt the same principle adopted by the Bombay Government. They have also passed a law prohibiting bigamy and allowing for divorce in certain

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cases. Other Provinces have gone ahead of us. They have passed laws recognizing the right to divorce and also the principle of monogamy.

"Sir, clause 4 makes bigamy an offence. It is not only void but it is also punishable under this Act. The House will not be perturbed by the fact that such things have been made offences. The House is probably aware that there is what is called the Sarda Act, according to which girls below 14 years of age and boys below 18 years of age cannot contract marriages. There was stout opposition when that Bill was introduced in the Legislative Assembly. But, later on, most of the Hindus or rather most of the Brahmans are thankful that such an Act has been placed on the statute book because they were not able to get suitable husbands for their girls before the girls attained the age of puberty. So this Act came to them as a blessing in disguise. Now, Sir, we see that most of the girls are married only after attaining puberty. In the same manner, if this Act is condemned and criticized from various quarters, I know the same people who criticize to-day will be the strongest supporters of the Act later on and may say that it is a very good measure and that they were wrong in having opposed it.

"Then, Sir, clause 5 mentions the grounds for divorce. The grounds under which divorce could be given are mentioned as follows:—

(a) if a husband has any other woman as a concubine, or

(b) if a wife, is a concubine of any other man or is leading the life of a prostitute; or

(c) has, without just cause, deserted the petitioner for a continuous period of not less than three years immediately preceding the presentation of the petition; or

(d) has been guilty of such cruelty as to render it unsafe for the petitioner to live with the other party; or

(e) has been an incurable lunatic for a continuous period of not less than five years immediately preceding the presentation of the petition; or

(f) has been suffering from a virulent and incurable form of leprosy not contracted from the petitioner for a continuous period of five years immediately preceding the presentation of the petition; or

(g) has been suffering from venereal disease in a communicable form for a continuous period of not less than five years immediately preceding the presentation of the petition, the disease not having been contracted from the petitioner; or

(h) was impotent at the time of the marriage and continued to be so until the presentation of the petition; or

(i) has ceased to be a Hindu by conversion to another religion.

"Even if divorce is provided for in this Bill, it is only on the above grounds that a divorce could be obtained under this Bill. No doubt, some of my hon. Friends in the other House wanted

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a provision that even in the case of adultery, divorce could be obtained, but that provision has been negatived there. As for the clauses that provide the grounds for divorce, I may at once say that they are not at all objectionable. Courts of law have all recognized these as judicial grounds for separation, and for refusing to accede to the request for restitution of conjugal rights, when suits have been filed by husbands against their wives. The very same grounds have been statutorily embodied in a statute passed by the Central Assembly in 1946. The present Bill only seeks to extend the same principles for separation to this provision for a divorce.

"Another provision in this Bill has been attacked in very strong terms, and that is sub-clause (2) of clause 5, which says :

'A wife who has completed eighteen years of age may also present a petition for the dissolution of her marriage on the ground that her husband had married again before the commencement of this Act and that the wife so married is living at the time of the presentation of the petition.'

"Objection has been taken to the fact that this Bill when passed, will be given retrospective effect. Sir, it is only a permissive provision in this Bill, under which even in cases of marriages that have been solemnized before the passing of this Bill, a wife is permitted to file a petition for obtaining divorce. If she is not willing to file a petition, none on earth could compel her to do so. But when such a right has been created, there might be mischief makers who will try to take advantage of this, and spoil the family happiness, and all that. But, Sir, how often does it happen? Only very rarely. I think we can trust to the good sense of the Hindu wives and husbands, to see that no abuse or misuse of this right is made. Only on proper occasions and at proper times, and on proper grounds, this right will be made use of. The very object of this Bill is to provide for some relief to the persons who have been suffering all these years, for want of a provision of this nature. The House is quite aware as to how many women have been suffering on account of the fact that their husbands have married a second time, or that their husbands have been suffering from venereal diseases or have been impotent, etc. It is just to provide some relief to these persons, that retrospective effect has been given to this Bill.

"Sir, as I have already stated, this Bill has been piloted by my hon. friend Mr. Kaleswara Rao in the other House, and we should all be grateful to him for having sponsored it. And more than ourselves, the womenfolk of this Presidency should be grateful to him. He has spent so much time, labour and patience on this . . ."

MR. PRESIDENT :—"Why does the hon. Member exclude men?"

SRI N. RANGA REDDI :—"I did not exclude men, Sir. I do say that this Bill has been conceived in the best interests of men also. Now that the Hon. President stated that, I am reminded of a Telugu story. The story is this. There was a husband who had married a young wife and an old wife. And the two wives were

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vying with one, another in seeing that the age of the husband corresponded with their own ages. The old woman was plucking out the black hair on her husband's head while the young wife was plucking out the white hair, with the result that the husband's head became bald. So, this question of misery and happiness refers to both parties. That is the very reason why divorce has been made possible, for the wife or the husband.

"I was saying, Sir, that Mr. Kaleswara Rao should be thanked for having brought forward this Bill. But unfortunately he is not able to pilot the same in this House. I can never be a substitute for him. I am sure, if he had been permitted to sponsor this Bill in this House, he would have brought to bear a greater ability on the discussion of the clauses, than I could at any time pretend to possess. Moreover, he has been a social reformer for a very long time, and he would be able to answer all criticisms that are likely to be made in this House, much better."

MR. PRESIDENT:—"I have no objection to Mr. Kaleswara Rao's sitting by the hon. Member's side."

SRI N. RANGA REDDI:—"Sir, I would very much like him to sit by my side. But unfortunately, the present provision in the Government of India Act, 1935, does not permit him to pilot this Bill in this House. I do not know why provision has not been made to permit a non-official member of one House to pilot a non-official Bill in the other House. The position continues to be the same even in the Draft Constitution. I wish that the members of the Constituent Assembly would take note of this, and see that a suitable amendment is introduced in the constitution providing for a non-official also to pilot a Bill in the House to which he does not belong, though he may not be entitled to a vote.

"With these few words, I move that the Bill be taken into consideration."

* MRS. MONA HENSMAN:—"I may point out to you, Sir, that all the gentlemen in this House are gentlemen in every sense of the word for they allow me, as the only woman here, to champion the cause before they speak their minds. And although I have no companion by my side, I would like Mr. Kaleswara Rao, with your permission, to take the place of an absentee lady member. I feel that I am quite in order to ask for that one privilege from you this morning.

"As you know, Mr. President, I have always up to now been sending chits to you asking for permission to speak for five minutes or ten minutes at a time. But to-day I would ask you, Mr. President, not to look at the clock but allow me to have my say and I promise that I shall be as brief as possible to respect the time of the House and to reserve something for the time when the Bill has its second reading."

MR. PRESIDENT:—"I shall give the hon. Member 50 minutes."

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* MRS. MONA HENSMAN :—“ Mr. President, Sir, I have very great pleasure in seconding this Bill for the reform of marriage and I count it a real privilege to be permitted to help the Hon. Proposer to get this most necessary and much needed bit of legislation on the statute book. Moreover, I may go slowly but surely over the things that I want to say. And you may also see that what I do not get at this morning in the first speech, I will bring in with the other clauses. I would say that this is a historic occasion, Sir, to-day when Government have given it to a private member to introduce a Bill that is going to affect not only half the country, not only the women of the country, but also the men and the children of this nation. I hope this example will be followed by many other provinces. I think that Bombay, honourable though it may be, is rather cowardly to leave the Bill to Government to pilot. But here our Government are indeed very courageous. We happened but lately to congratulate them on their being the only Government that has introduced total Prohibition. And we are going to congratulate them ourselves in the near future on abolishing Betting on Racing, although the Hon. Minister in charge of Transport still thinks of collecting money by running special buses on race days, to Guindy. I think before long a Bill to prohibit races will be introduced by a private member. The fact that the Government have allowed the hon. Mr. Kaleswara Rao to pilot this Bill in the other House clearly shows the confidence they have in his good and right thinking in all matters concerned with this Bill.

“ Mr. President, Sir, in considering the Bill, I would first like to bring to your notice the amendments that are to be moved in this House to the various clauses of this Bill. We have already seen several times that in the case of various Bills that have come before this House, not even a comma or a colon, not even an ‘ i ’ or ‘ t ’ has been allowed to be altered. I trust that to-day, in the case of this Bill also, the same precedent can be followed, because although the amendments are worthy, and although the gentlemen who have given notice of them may have indeed good reason and justice on their side, although the hon. Mr. Kaleswara Rao and Mr. Ranga Reddi would be the first to say that the Bill is not perfect in every detail, yet, this Bill goes as far as the public is prepared for it, and as far as we in this House can endorse it with a full heart, and with great applause. Some of the amendments amount to cut motions—but this is not a Budget Session—and I shall deal with them in a few moments.

“ May I congratulate you, Sir, together with the Hon. Leader of the House, and the hon. the Leader of the Opposition, for having allowed this Bill to be brought before this House first on the Agenda this morning. For my part, I feel that this Bill should precede the Animal Sacrifices Abolition Bill that has been given notice of by my hon. Friend, Mr. S. B. Adityan, and the Muslim Wakfs Bill to be moved by Mr. Farookhi Sahib, because the woman at home and in public life have got everything to do with this Bill. This is definitely a ‘ Home Bill.’ Let me point out to the gentlemen here, first that this Bill has been brought here not because

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we think that marriages have been unhappy in our country. Every person in this House, I take it, whether married or about to be married or perhaps not married at all, believes that marriage is an honourable estate, and we all are happy with our husbands and wives.

MR. PRESIDENT :—“ With your wives? ”

* MRS. MONA HENSMAN :—“ No. Sir, you with your wife and I with my husband—I meant one member and one wife, though you may twist the language in any way. You are always witty, and you feel that the House needs sometimes to be roused from solemnity to a laugh. I always welcome anything that you say and I know that you would vote for this Bill, if you were seated here to-day with us instead of being in the Presidential Chair.

“ I would like to say that this Bill has nothing to do with the breaking up of a home. In fact it honours marriage. It makes the union of man and woman such a sacred thing that only under certain conditions, can that be set aside by the law. For instance, in the first case, where a man takes another wife, his act amounts to what, in my opinion, is unfaithfulness; not a stray unfaithfulness, not the infidelity of a day, a week or a month, but a continued infidelity is what we contemplate under this Bill. I shall come to the clauses providing for divorce, in a few minutes.

“ But let me assure this House that Mr. Keleswara Rao and Mr. Ranga Reddi, both of these hon. Members are very wise in having in this Bill a clause that only after the commencement of this Act, and in respect of marriages performed after the passing of the Bill can anyone be brought within the scope of the law for having got two wives. After the commencement of this Act, I say, and not with retrospective effect, can there be this wonderful freedom for women. I belong to a community which you may say is not affected by this Bill. But we women have always stood together. What affects one affects another. I did not look at the faces of the gentlemen of this House, when I came in this morning and I wonder what their creed may be; for so long as the hon. Members of this House are loyally abiding by the decisions of yourself and so long as we all together seek the best for India I consider they are all equal.”

THE HON. SRI K. MADHAVA MENON :—“ Are we so ugly, Sir? ”

* MRS. MONA HENSMAN :—“ We look upon them with other eyes than that of a Beauty Contest judge—I am speaking of the spiritual and the inward beauty of each gentleman here.

“ The old Hindu Shastras lay down that a woman should look upon her husband not only as the head of the home but also as the centre of the universe. Did not Savitri go after her Satyavan and face so many perils I doubt whether any man would have gone through? We, wives in our homes never tell our husbands what we have to go through, because we know our husbands would take

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pity on us. We do not want pity. We work side by side with them; we have our work to do and they have theirs. A happy home is one where the man is in complete possession of the body, soul and spirit of his wife and the wife has her husband as her own. They share together the interests of the home and their children.

"Sir, when we come to the various clauses of the Bill one by one we will have our chance of saying what we think about them. The hon. Member Mr. Ranga Reddi has drawn your attention to the fact that in the case of women below 18 years of age, the parent or guardian must be blamed as the aider and abettor. In 1930 when Dr. Muthulakshmi Reddi introduced her first Bill, there were many pitfalls and loopholes. This Bill has covered all of them. It does not mean that nobody can ever commit bigamy, for even in other countries where monogamy is the rule, bigamy also exists. But where there is a will there is a way everywhere and in any place. The hon. Member Mr. Kaleswara Rao has given us the will and shown us the way to married bliss by bringing forward this Bill. The principles of the Bill are so high and the ideals so lofty that the future generations in the Province will have much higher ideals and principles to follow than they had before and they must prove worthy of the same.

"Sir, the question of divorce is one of the vexed questions of the day. Surely when men and women marry they have no idea of separation. We in this country whether Hindus or others look upon marriage as sacred. The grant of the right of divorce does not mean that men and women will seek judicial separation by hundreds and thousands. Lawyers may profit by it in their pockets, but they will certainly not profit by it in their homes, for the women members of their families will have their own views in the matter.

"I would ask hon. Members to look first at the very guarded provisions for divorce. It is desertion by the man or woman for three years, not months. If a person is called out on active service, or if he has to go out as an Ambassador to some foreign country and if his wife has to stay behind, that is not desertion. The law as I understand it and I hope the hon. the Leader of the Opposition will bear me out here, is that there should be complete severance of communications between the parties concerned before desertion can be pressed as a cause for divorce. Three years, I do feel is perhaps a little short and it may cause hardship sometimes, but, Sir, everything would cause hardship. If we said 10 years or 12 years, that also would cause hardship. Look at the immortal stories of Enoch Arden and other men who returned from their voyages or journeys or wars, years and years afterwards when they were all considered as dead. These are accidents of nature, of God, and law may not provide for them. If a man has neglected his wife, his lawfully wedded wife for three years without any communication with her, without seeking for her, without enquiring about her and without cherishing her, then he may be considered to have deserted her. To divorce her would not be a loss to him, because he has already proved that he does not want her. Why should not the wife be

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allowed to go and be honourably free from the gentleman who has loosened his claim upon her? It is that kind of desertion that will be reckoned as a cause for divorce.

"The next cause is cruelty. It may be said that there may be collusion between a husband and wife who wish to separate and cruelty may be alleged as a cause. But this clause does not cover that case. It must be cruelty to the point of making it unsafe for the woman to stay with the man. Such cases may occur one in a million. I do not believe that the men of our country in any way seek to hurt the women. There may be some psychological people who do and the psychiatrists may be able to deal with them better than their wives. They are extraordinary cases. But cruelty here means cruelty to the point of putting the woman's life in danger, if she continued to live with her husband. No more arrangement of 'You beat me and I claim divorce' can be brought forward to break up the marriage of a couple. She might not be in this world at all and she might be sent to heaven or the other place. Under the circumstances, why should she not be free to lead her life? Perhaps she has children and relations and she loves her life just as much as she did when she married. Why should she be subject to a law which binds her to continue inevitably with a man who may in extreme cases wish her harm? I therefore do not feel that the House would object to this clause relating to cruelty, which I find is a most reasonable clause.

"Then I come to lunacy. Perhaps I may evoke a smile if I say that I have been connected with a lunatic asylum or a mental hospital for ten years. I still go and visit that place. I know the mental torture, the sorrow and the suffering of a woman who sees her husband behave strangely to her or not behaving as a husband at all. A man like that should be cared for by someone who knows his case. Continuing to live in the home with wife and children would never cure him. When it has become a settled case of lunacy, it is better to have divorce, because it sometimes brings great suffering for the women.

"What about the other diseases? It is one of the vexed points of divorce. The diseases may be malignant and virulent. At one stage they may be cured. I know that one or two specialists have said that there should be some time-limit. But let me tell you in the case of the two diseases mentioned in the Bill—venereal disease and leprosy—no man or woman who knows that he or she is suffering from such a disease will do anything but rush to a doctor, take the best possible treatment and do everything possible to get rid of the scourge. Even when these people do not get any benefit, they will go on trying and will never give up hope. It is rather a hard business for a woman to continue to be the wife of such a man. She may live with him in the house, for I do not think that any woman who takes out a divorce in such cases would strand the man. She would still be looking after him as much as possible, and give him special treatment. If she could not afford to get doctors and nurses, she would give him food and drink and look after him, but she would draw the line at being his wife, because that would

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involve not only harm to her but to her children also and the other inmates of the house. There are some amendments to this clause and I hope they will be withdrawn, because no woman would exercise her right and leave her husband when he is ill and most in need of help and when perhaps he would be most loving to her. Also by divorce, I do not mean that the woman would go and marry another man; it means only that she would be free from performing the duties of a wife; she would look after their children if they have any.

"I now come to the courts. You will remember, Sir, that there were many Government Bills which we have recently passed which contained provisions for tribunals and courts but gave no right of appeal. Full scope was given for whatever was considered right by the authority concerned. These divorce cases are different, for this Bill provides that they may be brought in all their details, with all the witnesses and evidence before a court of law. There is the right of appeal. What man can want more than this? The courts have only men-judges and will men be hurt by their own sex? Surely they would examine the cases most meticulously to find out whether there was any flaw in the woman's argument. The courts of appeal have all got gentlemen as judges at present. So the gentlemen of this House need not fear that any right that would be given to the women by this Bill would be used against them because the women will have to go before men and prove their case.

"Then, Sir, I come to the clause about independent income and expenses and subsistence. It is right to have put in this clause. Women, especially Hindu women, have no right in law to property. They have no bank accounts and cannot find the money to run cases in courts. Lawyers have got to be paid. The best men could not be got from a panel of free lawyers. The Leader of the Opposition will support me when I say that every man is worthy of his hire. So if an able and excellent lawyer has got to come and plead before a court on behalf of a woman, he must be paid. We women have very few rights. We have no debentures, we are not given shares in mills, shares in banks and the Reserve Bank of India does not accept us as directors. Where are we to get the money from? . . ."

MR. PRESIDENT :—"Is it so?"

THE HON. SRI H. SITARAMA REDDI :—"They are not competent, Sir."

* MRS. MONA HENSMAN :—"Competency is not the question, Sir. Does not the Hon. Minister Mr. Sitarama Reddi hand over to his wife all his earnings every month and let her spend them as she thinks best? He only speaks with his lips about women being incompetent but he knows in the heart of hearts that women are certainly competent. All these years they have been proved so."

THE HON. SRI B. GOPALA REDDI :—"Subject to audit!"

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MRS. MONA HENSMAN :—“ So it must be provided that the husband should meet the expenditure of the wife if the wife is proved to have good cause for bringing the matter before the court.

“ There are certain amendments to be moved to-day about people who have got no children by the first (and only) wife and saying they may marry another. Yes, Sir; why not a second, a third, a fourth, a fifth, a sixth and a seventh? But can they guarantee that they can have a son by the eighth wife? Is it all the fault of the woman that a child is not born? No, Sir; I feel that those gentlemen who have put in this particular amendment and all such amendments should look back into the sastras and the Hindu Vedic Code. The Hindu Vedic Code has already provided far better for cases like this than law of any other religion in any other country. I refer to the right of adoption; none of the other religions says that a child can be adopted so completely, so entirely, so legally and so wonderfully into a family—the adoption of a nephew, a brother of some other person's child—so entirely as our own as in the Hindu family. In our Christian Law, we can adopt a child; but in Hindu Law a child can not only become a son of the house, not only inherit property, not only get the love and the cherishing of the family, but that child can also perform the religious rites. That is a wonderful thing and in our vedic laws and sastras we have definitely got it. They have provided that a child, if not born to the man and woman of a family, may be brought into that family entirely and made flesh and blood and one with the family as much as if he had been born there. These are things that do not need reconsideration; they are in our very bones and in our blood. Sir, children are the future men; the future of all nations depend upon children. But both here and in China—if I may make invidious distinctions—a child is looked upon not only as a member of the family but as the centre of the family, as new life, as new birth. I definitely and earnestly ask the gentlemen who think that some second wife can solve the problem of bringing a son into the family, is it more successful than adoption? No, Sir. What are all those stories of step-mothers. What are all the stories of half-brothers and half-sisters in the history of our country? Were not common brothers and sisters, men and women, boys and girls brought up by one father and one mother united in the household? Whose hands were most often stained with blood? Was it not the half-brothers who each strove for property or a throne? What were all the troubles that have arisen in the law courts? The hon. Member when he introduced the Bill, said, a man may take a second wife for reasons of property or for reasons of progeny. Progeny and property may be all right, but propriety demands that they are to be husband and wife, complete in themselves, until a child is given to them by God on High or taken by others into their home. This is quite practical; in fact I would like to draw attention to the fact that this is the most practical

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Bill that has ever been brought into this House. The hon. Members of the Assembly recognized that fact and although there are difficulties in the way, difficulties as high as mountains, they can all be moved by faith. I call upon the faith of the hon. gentlemen of this House to move the mountains of difficulties in the future, so that the men and women of the future may have the freedom that is now on paper, the freedom of August 1947, so that that freedom in reality can enter into their lives.

"I have only one last point to make because I know the clauses will come up and I can have my say then; and I am also anxious that every gentleman should speak if he wants, so that we can know what his mind is on this question. I would just ask you to look carefully and reasonably into the provisions of this Bill and ask whether one word there is likely to change the national or the personal or the individual freedom of our nation. No, Sir, it gives us the freedom of becoming entire family units and making marriage a free and honourable estate. It supports the marriage law the honourable estate, and does not seek to break up bundles or make havoc of married lives.

"Sir, I will sit down after thanking you very much for allowing me to speak. I trust that all the gentlemen who felt that there were difficulties here will find that their difficulties dissolve as their faces dissolve in their smiles when you make one of your witty remarks. Sir, I trust this Bill will not take much longer, but will be put on the statute book as quickly as the Agriculturists Relief Bill or the other Bills that went through yesterday. May I close with these words that every gentleman who opposes this Bill will be giving cause to the thought that he is one wanting in ordinary sympathies and that he desires secretly if not openly to take a second wife." (Laughter.)

MR. PRESIDENT:—"The question is that the Bill to prohibit bigamous marriages among, and to provide for a right of divorce for Hindus in the Province of Madras, L.A. No. 6 of 1947, as passed by the Assembly, be taken into consideration at once."

DR. SYED TAJUDDIN SAHIB:—"Mr. President, Sir, I am one with . . ."

SRI C. N. MUTHURANGA MUDALIYAR:—"I want to say a few words . . ."

MR. PRESIDENT:—"I think you can give a chance to a non-Hindu to speak."

SRI C. N. MUTHURANGA MUDALIYAR:—"I want to oppose this Bill."

DR. SYED TAJUDDIN SAHIB:—"I also want to oppose this Bill."

DR. V. K. JOHN:—"On a point of order, Sir. If any Member opposes the Bill, would it mean that he wants a second wife." (Laughter.)

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DR. SYED TAJUDDIN SAHIB :—“ Mr. President, Sir, I am one with the high and lofty ideal of monogamy, but at the same time I think the present Bill is too rigid and too inelastic and I believe it is a very shortsighted one, without taking into consideration certain contingencies, certain situations which may arise in the life of human society or in the life of a country. Before going into details, on this aspect, I have got an initial difficulty with regard to . . . ”

MR. PRESIDENT :—“ The mover and seconder have spoken; we have this Bill and other Bills too and we have also got some non-official resolutions for to-day. I think it is better I fix a time-limit. Is it agreeable to the House? ”

DR. V. K. JOHN :—“ Let there be full discussion on this Bill, Sir. The other Bills may go to Select Committee or for circulation. ”

MR. PRESIDENT :—“ Even then, I should like to enforce this rule that nobody should speak for more than half an hour. ”

SRI C. N. MUTHURANGA MUDALIYAR :—“ May I submit there is no time-limit for Bills? ”

MR. PRESIDENT :—“ We have got it in our rules; perhaps you are thinking of Delhi. ”

DR. SYED TAJUDDIN SAHIB :—“ I am face to face with an initial difficulty with regard to certain aspects of this Bill. The learned author of the Bill has brought within its scope Buddhists, Jains and Sikhs as well. ”

MR. PRESIDENT :—“ He has left off Muslims. ”

DR. SYED TAJUDDIN SAHIB :—“ Yes, I know that. I want to know whether the author is competent enough to bring in the followers of other religions such as Buddhists, Jains and Sikhs. Opinion is divided whether these classes of people are within the Hindu fold itself. Of course, Buddhism, Jainism and Sikhism sprang up at one stage or another from Hinduism just as Islam and Christianity sprang up from Judaism. Whether Buddhism is the real child of Hinduism is a matter on which opinion is divided, so also with regard to the other two religions. There is a view that Hinduism is broad-based upon the four varnas; they are the four pillars as it were on which Hinduism rests; I do not know whether it is correct or not. This is my information. But Buddhism does not believe in the varnas nor in the Vedas. So also Jainism does not believe in the Vedas. These are the fundamental and essential differences between Buddhism and Hinduism. That being the case . . . ”

THE HON DR. T. S. S. RAJAN :—“ On a point of order, Sir, may I know what the hon. gentleman is speaking about? He is speaking on the tenets of various religions; I suggest the subject before the House is not that. ”

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THE HON. SRI K. MADHAVA MENON :—“ For all personal law, Buddhists and Jains and Sikhs follow the Hindu Law ; there are court decisions.”

MR. PRESIDENT :—“ That is what I thought myself, but the hon. Member argued that a member who belongs to one religion ought not to legislate for other religions, and so I thought he might continue.”

THE HON. SRI K. MADHAVA MENON :—“ The draft Hindu Code before the Central Assembly also legislates for Buddhists and Jains.”

DR. SYED TAJUDDIN SAHIB :—“ I was saying that one religion should not legislate for other religions. This Bill does not provide any safety valve as it were to meet extraordinary circumstances under extraordinary situations ; that is my grievance. Of course monogamy is being practised by I think 99 per cent of the people here, there and everywhere, and the mover himself said most of us practise monogamy. If you take data in this House, I do not know whether you will find even a single person who has got at present more than one wife.”

MR. PRESIDENT :—“ I think you will be surprised if you take the data.”

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DR. SYED TAJUDDIN SAHIB :—“ I do not know that I will now put the question to the mover as to how polyandry disappeared from the country. My view is that because no man was willing to marry a woman who has already married somebody else, polyandry disappeared. Similarly, there would not be any difficulty with regard to polygamy or bigamy also, if a woman refuses to marry one who has already got a wife. Instead of that, you bring in an inelastic and very, very rigid Bill like this and thereby you are creating new difficulties. Every social institution has got its own uses and abuses. By passing this Act, you are going to give room for committing adultery and such things. We have had two great global wars and a third war is just staring at us. Supposing the male population is decimated, what would be the situation?”

MR. PRESIDENT :—“ Polygamy would be the rule.”

DR. SYED TAJUDDIN SAHIB :—“ So, to meet such extraordinary situations, there should be some provision. It should not be very rigid. That is why Prophet Mohamed—though polygamy is in existence from time immemorial—regulated and restricted polygamy. So much so, in extraordinary times, it can be utilized as a national asset. Even such things might do service to a nation. This Bill, I believe, will be all right if there are adequate provisions for such extraordinary situations. Then I will have no objection to this Bill.

“ Sir, with regard to divorce, the mover of the Bill said that in Islam divorce is such an easy affair. I am afraid, he does not

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know the rules and regulations pertaining divorce in Islam. According to the one sect of Muslims, the period lasts from four to seven years under certain circumstances."

MR. PRESIDENT:—"I think it is four months. The period 'Iddat' is only four months."

DR. SYED TAJUDDIN SAHIB:—"It is seven years according to one sect of Muslims in certain circumstances."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Sir, I think the period is four months. Perhaps he is referring to something else."

DR. SYED TAJUDDIN SAHIB:—"Sir, supposing there are differences between a man and a woman. Opportunity is given—fairly a long time—before divorce comes into operation. That is my point. That period differs. So far as my recollection goes, the period differs according to the sect he belongs. There are various sects. The head of each sect has laid down a different period."

MR. PRESIDENT:—"I am sure, the period will not be seven years. Otherwise, by that time a man or a woman will become too old to marry."

DR. SYED TAJUDDIN SAHIB:—"Sir, in China a divorce is granted when the wife happens to be a chatterbox. That is all that is necessary there. Even among the Catholics divorce is not allowed. So, these are two extreme cases."

MR. PRESIDENT:—"If the House has no objection I may say this. I read a news item sometime ago that in England a lady had applied for divorce because her husband was kissing her too much."

DR. SYED TAJUDDIN SAHIB:—"Sir, such things are not happening in India."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"I think I have to make one point clear . . ."

MR. PRESIDENT:—"You mean the Muhammadan law."

ABDUL LATIF FAROOKHI SAHIB BAHADUR:—"Yes, Sir. 'Iddat' is the period coming after divorce. That period may be four months, ten days and in certain cases it may be even less. What Dr. Tajuddin was saying, was with regard to the divorce itself. There may be cases where time may be given if the husband is absent or nobody knows his whereabouts . . ."

MR. PRESIDENT:—"I understand your point. May I take it that Dr. Tajuddin is opposing the Bill."

DR. SYED TAJUDDIN SAHIB:—"In a way I oppose the Bill."

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* SRI C. N. MUTHURANGA MUDALIYAR :—“ Sir, I rise to oppose this Bill even at the consideration stage. While opposing this Bill, I stand here with a heavy heart. Sir, first of all the Leader of the Opposition and the lady member of this House have indicated a codification that everybody who opposes the Bill wants to marry again.”

DR. V. K. JOHN :—“ No, Sir. I protest against it. I only put the question whether it is so because I myself want to oppose certain portions in the Bill.”

* SRI C. N. MUTHURANGA MUDALIYAR :—“ But it looked as though you have seconded her.

“ Secondly, this Bill has been passed in the Lower House having been sponsored by Sri Kaleswara Rao, a gentleman as old as myself—if not older—and we have been members of the Legislature from the year 1926 in one or other of the Legislatures. Mr. Kaleswara Rao who brought the Bill having passed it in the Lower House, left the ‘ child ’ to be adopted by my hon. Friend Mr. Ranga Reddi and it has been brought here.

“ Sir, Hindus have got their own Hindu Code. And according to that Code and according to the ancient law, marriage is a sacrament and marriage is one of the ten ‘ Samskaras ’. The Hindu Code does not contemplate dissolution of marriage. This Bill brings in divorce and also introduces prohibition of bigamous marriages. But in our country among the Hindus—whatever their caste or community may be—monogamy is prevailing in the marriage system. There has never been a bigamy. But the Hindu Codes have decided that if a man has not got an issue, he can marry again in order to beget a child. The creation of a progeny is considered as the most important event in the life of a household. It is said in the Code that the birth of a son prevents the father from going into ‘ Narakam ’, otherwise called ‘ Puth ’ and so he is called ‘ Puthra ’. He prevents the father from getting into the hell of ‘ Narakam.’ That is the sacredness with which the marriage is considered and marriage has never been dissolved. No doubt, as I said in the beginning, the old sages such as Manu, Yagnavalkya, Bodhayana and others have recognized only monogamous marriages. But they have also given room for a second marriage in case the first wife has not begotten a child. Some of them say, if for eight years the first wife is childless, he can get a second wife. Again, some people say that if for ten years she is childless, he can get a second wife. That was the practice prevailing even in ancient times.

“ Even coming to modern times, there is the Nambudri Marriage Act formulated in 1932 that is in vogue in Malabar. According to that, a Nambudri man can marry a Nambudri woman and if she is childless for ten years, he can marry again a Nambudri woman. But the first wife is entitled to maintenance. That is also there. Even in the most recent Act passed in the Central Assembly in 1946, the second marriage is not prohibited. There is

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a provision for it. It says, that if a husband has to marry a second time, he must give his first wife maintenance and separate living if she chooses. So everything points to the fact that second marriage is allowable under certain conditions. It is not for money or property that one would like to have a second marriage. Hon. Members of this House were saying that one will marry even for the sake of money. I think it is not for money that one will marry but it is only for one purpose. If the first wife is childless or if she is chronically ill, the husband can marry again and the first wife must be given maintenance. He is bound to give maintenance. That is all."

THE HON. SRI K. MADHAVA MENON :—"Are women permitted to marry again in the Shastras?"

SRI C. N. MUTHURANGA MUDALIYAR :—"Sir, in this connexion I will quote one 'sloka' which I read in my early days for elucidating my hon. Friend Mr. Madhava Menon. I do not know Sanskrit nor have I studied it. According to that 'sloka', if the husband is missing for a long time, or if he is chronically ill, or if he dies, the wife can re-marry. (A voice : 'If he is in jail.') That is not envisaged in that 'sloka.' That issue had not arisen at that time.

"Sir, the hon. Mover of this Bill said that a man can marry any number of wives but that a woman is not free to do so. But I submit that in our ancient Sastras there was no such prohibition for a woman marrying again. There are, as I have just now quoted, many slokas there to that effect. (Interruption.) Sir, the hon. Mover of the Bill has quoted Mayne's Hindu Law and its commentary by Srinivasa Ayyangar. But unfortunately he was not able to read it, because he missed the page. I have also looked into Mr. Srinivasa Ayyangar's Commentary of Mayne's Hindu Law and I found there enough support for my proposition also that a second marriage can be had for childlessness."

MR. PRESIDENT :—"That is only for a man, but the law that is sought to be made here is more for women, because if a man is alive, the woman cannot marry another husband."

* SRI C. N. MUTHURANGA MUDALIYAR :—"There are enough authorities in our ancient Sastras, as revealed in these slokas for my proposition also and let them be codified and brought in the form of another Bill by my hon. Friend Mr. Kaleswara Rao. But on the whole, Sir, I submit that this Bill ought not to be accepted, which states that under no circumstances can a man marry a second time. That is abnoxious to the very Hindu sentiment. Divorce which is also provided in this Bill is foreign to this country. On those two principles, I oppose this Bill, Sir. Christians make divorce; it is a western plant brought into this country. But what is the position there? I understand from people who have gone to America, England and other western countries, that both men and women there are sorely oppressed by this divorce. They simply

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long when they will get out of this divorce law. They abhor it altogether. Why should we follow this western practice and want western laws in this country and then regret as they now do?

“ Therefore, Sir, I strongly oppose this Bill in its consideration stage at present. But if I am not successful, I shall try to move the amendments standing in my name.”

* DR. V. K. JOHN :—“ Mr. President, Sir, I rise to speak on this Bill not as a Leader of the Opposition, but as a member of the profession who is fairly acquainted with divorce law.”

MR. PRESIDENT :—“ Then the hon. Member is not opposing this Bill, is it so? ”

DR. V. K. JOHN :—“ That is not correct, Sir. Only members are allowed freedom to vote as they like.

“ Sir, there are two main provisions in this Bill. One is the introduction of monogamy and the other is divorce. Now, Sir, I support the first principle underlying this Bill, namely, that there should be monogamy except perhaps that a second marriage might be allowed under very special circumstances. From time immemorial it has been known that the man was always polygamous by nature, every man having a pound of polygamous pride in his flesh, but that has vanished in course of time, and to-day we find that men do not want to take a second wife when the first wife is living except under exceptional circumstances, and are content with monogamy. Therefore monogamy is practised not only by the Christians, but also by the Hindus and Muslims in this country, although according to the Muhammadan Law they are allowed to have four wives.

“ Now, Sir, law records what the general opinion of the community as a whole wishes to follow and I think it right to say that the opinion of Indians, as a whole, is that we must as a rule only have monogamy—one wife for one man. Now, Sir, I have no objection to support this portion of the Bill, but my own feeling is that we must have a uniform law on this which will be in force throughout this country. We must forget provincial, sectional and communal interests and divisions in this country after the 15th August 1947 when this country attained its independence. I should have been satisfied if we had simply passed a resolution recommending to the Government of India that we are of opinion that a law enforcing monogamy should be passed for the whole of India by the Central Legislature. Sir, in seeking to pass a separate law for this Province alone, the author of this Bill has committed one serious error in one of the provisions of this Bill. Clause 2, sub-clause (2) of this Bill says that, ‘ for the purposes of this Act, the domicile of a Hindu shall be determined in accordance with the provisions contained in sections 6 to 18 (both inclusive) of the Indian Succession Act, 1925.’ Clause 3 of the Bill says that this Act applies to Hindus domiciled in the Province of Madras. I think, Sir, that the intention of the author is that this Act should apply in Madras. That means, it cannot apply to anybody else.

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Sir, domicile is a term of private international law and if you look at any authority dealing with domiciles, you will find that domicile is used only in the case of a foreign national acquiring a domicile in another country, not losing his foreign nationality."

MR. PRESIDENT :—" I discussed this matter with the author of this Bill and I am told that the term ' domicile ' used in this Bill has the same meaning as defined in the Indian Succession Act. That Act says that domicile includes a person whose father and grandfather were born in this country."

* DR. V. K. JOHN :—" I know that, Sir, but what is the domicile of a Frenchman who has come and settled in India? His nationality is French. One has to see whether a person is first a non-national, and then alone he can be a domicile. Now a man is a domicile when he is resident in a foreign country; and a man can become a domicile in India, only when he wants to reside in this country permanently and not go back to his own country of origin, and he must satisfy certain conditions laid down in the law of the country of his domicile. That is the law relating to domicile.

" Now, Sir, there can be a domicile only for the whole country and not for a Province within the country, although his home may be situated in a particular Province. Therefore a domicile anywhere in Madras is a domicile of the whole country. There is no provision in law for being a domicile in Madras or in any other Province. If he resides in a Province, he is called only a resident of that Province. How can a Bengalee Hindu in Madras be a domicile in Madras? He is an Indian and belongs to the Indian nationality. He can only be a resident in Madras. Therefore it is wrong to use the expression domicile in relation to a Province. The author of this Bill has asked us to apply the provisions contained in sections 6 to 18 of the Indian Succession Act in determining the domicile of a Hindu. Perhaps if I do not read those sections and explain them to the House, hon. Members may not know what those sections contain and may not look into them even.

" Now, Sir, the Indian Succession Act provides for succession to movable and immovable property and Part II of that Act deals with domicile. Section 4 of the Indian Succession Act says, ' this Part shall not apply if the deceased was a Hindu, Muslim, Buddhist, Sikh or Jaina.'

" Section 5 (1) says that succession to the immovable property in British India of a person deceased shall be regulated by the law of British India, wherever such person may have had his domicile at the time of his death.

" Section 5 (2) says that succession to the movable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death.

" Section 7.—The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his

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father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

"Section 8.—The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

"Section 9.—The domicile of origin prevails until a new domicile has been acquired.

"Section 10.—A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile or origin.

"Section 11.—Any person may acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing under his hand of his desire to acquire such domicile; provided that he has been resident in British India for one year immediately preceding the time of his making such declaration.

"Section 12.—A person who is appointed by the Government of one country to be its ambassador, consul or other representative in another country does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with such first-mentioned person as part of his family, or as a servant.

"Section 13.—A new domicile continues until the former domicile has been resumed or another has been acquired.

"Section 14.—The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

"Section 15.—By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

"Section 16.—A wife's domicile during her marriage follows the domicile of her husband.

"Section 17.—Save as hereinbefore otherwise provided in this Part, a person cannot, during minority, acquire a new domicile.

"Section 18.—An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person."

MRS. MONA HENSMAN :—"On a point of information, Mr. President, may I know whether a wife is a movable or immovable property? (Laughter.) If she is an immovable property, then apparently she does not belong to herself, but belongs to the man who is her husband. Do hon. Members want to treat women as immovable property?"

* DR. V. K. JOHN :—"I submit, Sir, that a wife is movable property if she is movable by her husband. (Laughter.) (Interruption.)"

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" Sir, the Indian Succession Act deals with succession to properties. Succession to immovable property of a person deceased is regulated by the law of the country in which such person had his domicile at the time of his death and domicile is a term of pure international law as against the law applied to the nationals of a particular country."

* MR. PRESIDENT :—“ Clause 3 of this Bill says that ‘ this Act applies to Hindus domiciled in the Province of Madras ’. Section 7 of the Indian Succession Act says that the domicile or origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled. So according to this, does it not follow that a Hindu whose forefathers have lived in this country, acquires the rights of a domicile? Suppose there is a person who is a Hindu and his forefathers have lived in this country, then he must have legitimately been born in this country and therefore this definition should apply. Is this not correct? ”

* DR. V. K. JOHN :—“ That is what I want to make clear, Sir. If a person is a national of a country, then there is no question of domicile. It is only a question of residence. An Indian is never a domicile in India. He is only a national of this country. But a non-Indian can be a domicile in this country, 1 p.m. although he belongs to a different nationality if he has no animus to go back to his own country. He may be a domicile and still continue to be a citizen of another country, or a national of another country. Domicile is with reference to the country as a whole. A person resident in Bengal is not domiciled in Bengal. He is domiciled in India. Similarly a person resident in Madras is not domiciled in Madras. He is domiciled in India. There can be no Hindus domiciled in the Province of Madras. Therefore we must take the responsibility for passing the Bill as it is worded at present.

“ As I said, I would like to have one law regarding marriage and divorce for the whole of India applicable to Hindus, Christians, Muslims, Parsis, etc. We must fight against all disruptive tendencies based on religion, creed, community and Province. We are Indians first, Indians second and Indians last. But that time may not be reached very quick. The Muslims may like to have their own law for the time being. I am not saying that they should not have it now. But the objective must be to have one common law. We may borrow from the Muslim Law and other laws and incorporate in the common law.”

MR. PRESIDENT :—“ According to you, to whom will this Act apply? ”

* DR. V. K. JOHN :—“ The author of the Act says that this Act will apply *only* to Hindus domiciled in the Province of Madras. In that case it will not apply to anybody. The court will say that there can be no person domiciled in Madras Province and that there can only be persons who are domiciled in India.”

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MR. PRESIDENT :—“ According to you, section 3 as it is cannot apply to Hindu nationals.”

* DR. V. K. JOHN :—“ It cannot apply. There is ignorance of the principles of law in drafting the section.”

MR. PRESIDENT :—“ But section 4 will certainly make the Act applicable to all men and women living in Madras.”

* DR. V. K. JOHN :—“ But the over-riding section is section 3.”

The House rose for lunch.

(After lunch—3 p.m.)

* DR. V. K. JOHN :—“ I was on this word ‘ domicile ’ used in this Bill. I might say, Sir, that the law recognizes domicile of origin and domicile of choice. Now, Sir, in recent times the law of many countries has also accepted a special domicile called ‘ commercial domicile ’, for a merchant going out of his country to another country resides there and as a merchant he might acquire a domicile there and they say he can even acquire more than one domicile. I am also aware, Sir, that the word ‘ domicile ’ has been used in some Madras legislation as meaning residence. But such a use of the term ‘ domicile ’ is wrong. If this Bill becomes law it can also be quoted as containing the word ‘ domicile ’. Even if it appears in some Madras Acts, the accepted meaning of the word ‘ domicile ’ which is a term of private international law is that a person who is not a national of one country acquires a domicile, either a domicile of origin by having been born there or a domicile of choice by wanting to reside there permanently.”

MR. PRESIDENT :—“ I just wanted to know whether you still hold the view that a national so-called cannot be called a domicile.”

* DR. V. K. JOHN :—“ Strictly in law, Sir.”

MR. PRESIDENT :—“ What is the meaning of the words ‘ domicile by origin ’?”

* DR. V. K. JOHN :—“ Domicile of origin is defined in Halsbury. It is said that if a child is born to a domicile although he is a different national, an Englishman . . .”

MR. PRESIDENT :—“ Does Halsbury say that you must necessarily be a different national? What are the exact words? I find from Webster’s Dictionary that domicile really means residence.”

* THE HON. SRI K. MADHAVA MENON :—“ An English Act has already defined, Sir . . .”

MR. PRESIDENT :—“ I shall come to Acts later on.”

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* THE HON. SRI K. MADHAVA MENON :—“ In ‘ words and phrases ’ domicile has been defined, Sir, and I do not think there is much difficulty about it. What is given in that seems to be the most correct expression, Sir, if we are to go by precedents. I am reading from a decision of Lord Cromwell in the House of Lords: ‘ By domicile we mean the permanent home. If you do not understand your permanent home, no illustration from foreign writers or foreign languages will help you very much.’ There is also a definition, Sir, which is very near to correctness and it is ‘ Habitation in any place with intention to live there for ever unless some circumstances occur to alter his intention.’ ”

MR. PRESIDENT :—“ In Webster’s Dictionary also ‘ domicile ’ is described as a place of residence. So it is unnecessary for any one to be the national of another country.”

* THE HON. SRI K. MADHAVA MENON :—“ The distinction seems to be between ‘ domicile ’ and ‘ naturalization ’, Sir. Another King’s Bench decision says that a place is properly a domicile for a person in which he has acquired a habitation for himself and his family not for a mere special or temporary purpose but with the present intention of making it his permanent home, unless and until something unexpected happens to induce him to adopt some other place as his home. In another place it is said, Sir, that a certain English Act of 1861 will apply to all those domiciled in England. ‘ Domicile in England ’ means, in England as distinct from Scotland and Wales.”

MR. PRESIDENT :—“ Does the word ‘ domicile ’ exclude the natural inhabitants of the place? ”

THE HON. SRI K. MADHAVA MENON :—“ There is another Act, Sir, namely, the Transfer and Bequests Act. This Act says that ‘ this Act shall apply to all persons . . . whether domiciled within the Madras Presidency or not.’ ”

* DR. V. K. JOHN :—“ I think we need not spend much time over that word ‘ domicile ’, Sir. If it means residence, mere residence, I think the word ‘ residence ’ could better be used than a term which has a special meaning in international laws.

“ Sir, I was dealing with the word ‘ domicile ’ only in connexion with my suggestion that this should have been an All-India Act. Now, Sir, I am on another point.

“ As I originally said, Sir, this deals not only with monogamy but also deals with divorce. In dealing with divorce it does not appear to follow the principles relating to divorce. Sir, matrimonial relationship is not a matter merely for the individuals, the husband and the wife. In a matrimonial court, even admissions do not count. It concerns the State, the public and the children. Sir, in a recent case reported in 1945 M.L.J., 389 in the High Court, English decisions were quoted and followed. The Chief

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Justice dealing with this question said: 'The divorce court is entrusted with a jurisdiction of national importance.' So, Sir, this is a matter of national importance. 'He continued the stability of the marriage tie and the terms on which it should be dissolved involve far wider considerations than the will or the consent of the parties to the marriage.' 'A divorce court does not, as every other court does, act on mere consent or the pleading or mere admissions by the parties, nor does it act on uncorroborated confessions.' 'This is a case, Sir, in which I myself appeared and enunciated those principles which were accepted.'

MR. PRESIDENT :—“ Those principles are accepted here also.”

* DR. V. K. JOHN :—“ What I am stating is this, Sir. You take this divorce portion of the Bill. It is very objectionable. Clause 5 deals with divorce. Take clause 5-E. Now, Sir, the grounds are stated as follows for a divorce: 'has been a lunatic for a continuous period of not less than five years immediately preceding the presentation of the petition.' I am taking only one instance. Now, Sir, that is no ground at all. That kind of lunacy or idiocy is never exploited as a ground for divorce. I say the man ought to treat his wife who is a lunatic and not divorce her. I am taking this section 5-E, Sir, to show how the principle of law has not been followed. It is not considered in any country, either Britain or America or any other country that one can divorce his wife for being a lunatic after marriage. But one can ask the court to declare a marriage to be a nullity under section 19 of the Indian Divorce Act but the language used there is that such decree for nullity may be made on the ground that either party was a lunatic or an idiot at the time of the marriage. Now, Sir, when we are dealing with divorce we must also think of the hard-hearted men and some hard-hearted women when they do not agree. Under this section, a man can drive his wife to lunacy and say that she has been a lunatic for five years, and so he should divorce her. On what principle is it given, Sir, that lunacy for five years can be a ground for divorce? The hon. Lady Member here says that this Bill must be passed into law. She says that men must be able to drive the wives to lunacy for five years after marriage and they must get a divorce. Sir, ladies are very difficult to be persuaded and it takes a long time for them to understand. Such a provision has not been made in any civilized country that a lady becoming sick, or a lunatic after marriage might be divorced. What fault has she committed? Why not treat her? Why not give the man the right to marry again instead of divorcing the woman? There is another ground, Sir, and it is this: 'Woman suffering from virulent and incurable leprosy and if she continues to be like that for a continuous period of five years immediately preceding the presentation of the petition.' Public opinion would say, Sir,—it is not only my opinion but every section of the public will say”

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MR. PRESIDENT :—“ May I make a suggestion? These are all details of some portions of the various clauses. The hon. Member may talk about them when the clauses are taken up. A number of people want to speak now. Therefore he may confine himself to general principles.”

MRS. MONA HENSMAN :—“ On a point of information, Sir. If a gentleman is a lunatic, can he also be divorced according to that clause? ”

MR. PRESIDENT :—“ I just want to tell the hon. Lady Member that a wife can divorce . . . ”

* DR. V. K. JOHN :—“ Now, Sir, divorce need not always be clubbed with monogamy at all because . . . ”

MR. PRESIDENT :—“ These are all various grounds for divorce.”

* DR. V. K. JOHN :—“ I am saying, Sir, that the principle has not been followed. It is not a matter only for the individuals concerned. I say there should not be any provision for divorce at all. I agree with the hon. Member, Mr. Muthuranga Mudaliyar, that it is not according to the sense of public opinion. When a woman is ill, say she is suffering from leprosy or some other illness, instead of attending to her and treating her, this Bill provides that you can divorce her. I say, Sir, that the law ought not to provide for divorce. If it provides for divorce it should only provide for divorce by women and not by men. Sir, in Indian society we are against a man divorcing his wife and not against a man marrying once again under certain conditions. But if you want to give a right to divorce, give the right to the woman and not to the man.”

MR. PRESIDENT :—“ On what ground? ”

* DR. V. K. JOHN :—“ On the ground of adultery and cruelty. You can give any ground. There may be various grounds. Under the Indian Divorce Act a woman cannot divorce her husband unless adultery is coupled with cruelty after desertion for two years. Therefore, although man can divorce, woman cannot divorce unless adultery is coupled with cruelty and desertion for two years.”

MR. PRESIDENT :—“ Will you allow me to understand this? Am I right in understanding that in English law, a man cannot divorce a woman for unchastity? My point is, can a man divorce his wife for unchastity in England? ”

* DR. V. K. JOHN :—“ Divorce for adultery. That is the legal term.”

MR. PRESIDENT :—“ For adultery, can a man divorce his wife in England? ”

* DR. V. K. JOHN :—“ In England that is done.”

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MR. PRESIDENT:—"Then why do you deny it to the Indian husband?"

* DR. V. K. JOHN:—"Because we have to look at Indian conditions and Indian public opinion in the matter. Sir, the English woman is different from the Indian woman because in England, a woman may find another man, and a man may find another woman. That is accepted by their society, whereas in India our women are mostly purdah women."

MR. PRESIDENT:—"Here, are you prepared to allow the right of divorce to the husband?"

* DR. V. K. JOHN:—"He should not have the right of divorce. If you are keen on giving the right of divorce, give it to the woman and not to the man. You can allow the man to marry again."

MR. PRESIDENT:—"Why?"

* DR. V. K. JOHN:—"Because conditions of our women are different. A provision for divorce by the husband will work a great hardship here. But the case of English woman is different, because she can have alimony and so on. Then, Sir, another point which is forgotten is this. English law provides a *decree nisi* and a *decree absolute*. After a *decree nisi* is given, six months must elapse for a *decree absolute*. Why? Because, the law still hopes that the husband and wife might come together and six months' time is given for them to come together. But, under this law, not even that six months' time is given. As I said before, the marriage relation is not purely a matter between the husband and wife, but it concerns society also. In the High Court or anywhere, you can never get your application for divorce decided in your favour easily. The Judge must hear all the evidence and he must be satisfied that there is no collusion. If I go to the High Court, I must satisfy the Judge because the law recognizes that there should not be any collusion. It is one of the fundamental principles in divorce that there should not be any collusion. Not only six months' time is not provided for, but nowhere it is said that the petitioner must file affidavits in the court of law that there is no collusion. If anybody wants to file an application for divorce in England, then there is an official appointed by the court of law to intervene. But, under the divorce Bill which is brought in here, there is nobody to intervene. There are many omissions and commissions in this Bill. As I said, Sir, marriage is not a domestic matter between the husband and wife but it is one which concerns society. The apparent object of this Bill appears to be to introduce monogamy. But really, the effect of this Bill will be to provide for divorce and women will suffer. I wish that Mrs. Hensman had studied this Bill and looked into it more closely and seen what would be the effect of this on women. A man may keep a concubine and then divorce his wife for reasons which can be accepted as reasons under this Bill. But, in Britain or in

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any other country, there is first *decree nisi* and there is *decree absolute* and then there is also provision for intervention. Again, Sir, in the divorce laws in other countries, there is provision for separation whereas there is no such provision here. I may say that in ninety out of hundred cases, there is separation and not a divorce. Is there any such provision here? Of course, I appreciate very much the object and the very good intention of the promotor of this Bill but I say it does not carry out his object. A provision regarding divorce ought not to be there at all.

“Then, Sir, there is also one very serious objection to this Bill. As a Legislature, we have supreme powers. We only ask the Government or any other body to make rules to carry out the objects of an Act. But, Sir, the mover of this Bill knows that this Bill is imperfect and therefore in clause 6 (f), the Bill says :

‘The Provincial Government will have power to make rules in respect of any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is either made in the Indian Divorce Act, 1869, or considered to be necessary by the Provincial Government for giving effect to the purposes of this Act.’

“Have you, Mr. President, in your experience come across any enactment where somebody is given subordinate powers of legislation not only to carry out the purpose of the Act but also to fill up the lacunas? I have never heard of this. Will this Legislature and will this House be justified in giving a *carte-blanc*he, whether it is to the Government or somebody else? Will this Government take up the responsibility of enacting laws of this nature?

“Then, Sir, the mover wants sections 11 and 12 of the Madras Nambudri Act, 1932, to be repealed. Now, Sir, the Nambudri Act has satisfied that community. Sir, the Nambudris belong to an ancient community of Malabar and without consulting them, you want to repeal that Act. Neither the mover nor the seconder seems to have understood the purpose of the Nambudri Act in introducing monogamy by this Bill. Monogamy is the practice in Hindu society and no new Act is necessary. Sir, as I said, neither the mover nor the seconder explained the Indian Succession Act or the Nambudri Act which is sought to be repealed. Now, Sir, section 11 of the Nambudri Act says :

‘No Nambudri who has a Nambudri wife living shall marry another Nambudri woman except in the following cases :—

- (a) where the wife is afflicted with an incurable disease for more than five years,*
- (b) where the wife has not borne him any child within ten years of her marriage, and*
- (c) where the wife has become an outcaste.’*

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"Therefore, Sir, under that Act, if any wife did not bear a child for ten years the husband can marry again. I am not questioning whether it is right or wrong. But, Sir, we are introducing some legislation without consulting the community for which we have passed a separate legislation some time back.

"Then, Sir, the hon. the Mover has simply referred to punishment and he did not explain it and lawyers only can understand it. He has referred to sections 494 and 495 of the Indian Penal Code. If a man marries a second wife, the punishment is seven years' imprisonment in one case and ten years in another case. He will be sent to jail for seven or ten years under the Indian Penal Code. Then, Sir, under the Nambudri Act, the penalty provided is this:

'Any Nambudri male who contracts a marriage in contravention of section 11 shall be punished with fine which may extend to one thousand rupees, but a marriage so contracted shall not be deemed to be invalid.'

'Any person who conducts, directs, or abets the performance of any marriage in contravention of section 11 shall be punished with fine which may extend to one hundred rupees.'

"Sir, it is a very serious thing to have the second marriage made void. With all due respect to our lady member in this House and perhaps the ladies listening, I might say that there are certain cases in which a second marriage is allowed even by the wife. I can give one instance. Once a client came to me. This client was an educated girl. A married man was carrying on with her and he had promised to marry her. She became pregnant. She wanted to know whether she can file a suit to enforce a contract of marriage. I told her that she cannot file a suit for specific performance and advised her to bring this to the notice of his wife. Then, Sir, the girl went to the wife of the man and told her condition and that she wanted to marry her husband. The wife said that she would ask her husband whether he was in anyway responsible for her condition. The husband said 'Yes'. Then the wife asked her husband to marry this girl. Why ban a marriage under this circumstance. Again, the Nambudri Act does not make a marriage void, as very often a marriage takes place after something happens. But, this Bill makes the second marriage void. What is the result? The probable consequence of this will be that the children born of the second marriage will be treated as illegitimate. What I want to say is that under certain conditions, the law allows a man to marry another person, whereas this Bill makes every second marriage void. Therefore, the fundamental principles which ought to govern the relationship of marriage and particularly of divorce have not been understood or applied in this Bill. Therefore, Sir, with great reluctance, although I appreciate the object of the sponsor of this Bill, I have to oppose this Bill because we cannot

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take up the responsibility of having this Bill go through on account of its omissions, commissions and particularly for the reason that it does not take into consideration the fundamental basis of the law of divorce and marriage."

* SRI S. B. ADITYAN :—" Mr. President, Sir, the Mover of this Bill is to be congratulated for the very good intentions in moving this Bill but there are certain undesirable and reprehensive aspects. Earlier in the day, mention was made of divorce being granted on flimsy grounds and dissolutions being granted on easy grounds, mention was made of a wife going to the court and asking for dissolution on the ground that the husband snored or was a chatter-box. Sir, I must point out that this Bill also contains such easy provisions for the dissolution of marriage, for instance clause 5 (2) says :

" A wife who has completed eighteen years of age may also present a petition for the dissolution of her marriage on the ground that her husband had married again before the commencement of this Act and that the wife so married is living at the time of the presentation of the petition."

" Here, this Bill provides such a flimsy ground for dissolution of marriage. Take a concrete case. I have a member of this House in my mind, when I say this. Supposing there is an aged husband, says of 70 years, who married in 1900 his first wife and later on after some years, married again a second wife and they are all living together as husband and wives for well over forty-five years.

" Sir, according to this Bill, the first wife can go to a court 3.30
now and ask for a dissolution of marriage and the court has no P.M.
option but to declare the marriage as null and void."

MR. PRESIDENT :—" She is not compelled to go to court."

* SRI S. B. ADITYAN :—" Sir, that point has been mentioned to me by many friends. It is said that ladies of our society would not easily go to court. Sir, if they would not go to court, then why provide for dissolution at all? Or if you provide for it, why not state the reasons under which divorce could be granted? Why not say, for instance, except for the reason that the man is a lunatic, an idiot or a cruel person, a marriage accepted by society, and by public opinion at the time it was performed, could not be dissolved easily, and no divorce could be granted? Sir, the provision in this Bill in this respect is very surprising and strange.

" Sir, clause 5, sub-clause 2 says : ' A wife who has completed eighteen years of age . . . —and obviously one who is aged 60 has certainly completed 16—may also present a petition for the dissolution of her marriage on the ground that her husband had married again before the commencement of this Act and that the wife so married is living at the time of the presentation of the petition.' And sub-clause 3 states : ' In any petition presented under sub-section (1) or sub-section (2), whether

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defended or not, if the court is satisfied that any of the grounds set forth in either of those sub-sections exist for dissolving the marriage, it shall, by order, dissolve the marriage.' Sir, the wording is 'before the commencement of this Act.' It does not matter, even if the marriage took place some 40 years ago. And sub-section 3 provides what the court ought to do in such a case. I ask, Sir, why give room for such a decision, and create unpleasantness in a family which might have got on happily for a number of years? It is simply throwing an apple of discord into family relations which ought not to be disturbed.

"Sir, you said that the first wife is not compelled to go to court. The first wife has very often relations who could and would create trouble, and they are given a handle in this Bill to blackmail the husband, if they want to do so. Sir, domestic quarrels will arise in the best of households. But they are patched up, and the parties are happier thereafter. But if this Bill is passed conditions would be worsened. If there is a small quarrel, it will open the door to the first wife to go to court and apply for the dissolution of the marriage, and the court has no option but to dissolve the marriage. Such a thing ought not to be provided, where the first marriage had been accepted as good and valid by society at the time it was performed, and was tolerated by public opinion as it existed at that time. Our ancient scriptures, which we regard as sacred, did tolerate marrying of two wives, although we now take a different view. But 40 years ago, it was not looked down upon, as it is to-day. My main point is that bigamous marriages which were then accepted and performed with due ceremony, ought not to be disturbed for the simple reason that they were contracted before the passing of this Act.

"Mrs. Hensman mentioned that the courts are given the discretion in the matter, and therefore men need not be afraid, and that most of the judges are gentlemen and will not favour a lady. But according to this Bill if a lady goes to court and asks for dissolution of marriage, the court has no option but to grant divorce, because the wording of the clause is that . . . it shall, by order, dissolve the marriage."

"The Hon. Mr. Madhava Menon mentioned that there is such a provision as this in the Hindu Code. I do not know whether Mr. Madhava Menon is going to move his amendments to-day. I do not know whether he will now move his amendments, because that will mean sending the Bill on to the other House once again. I was surprised to hear that it is in the Hindu Code. If it was provided in that Code, as it emerged from the Select Committee, then one would have to accept it as a reasonable thing. But I find that this sub-clause is not only omitted there, but the exact opposite of it is provided in the Hindu Code. Both in this Bill, and in that, we have the corresponding sections which lay down provisions for dissolution of marriages for stated reasons and just causes. But there is no analogous provision to sub-clause 2 of clause 5 in the Hindu Code. We have only this: 'Nothing in sub-section 1

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shall be deemed to authorize a court to pass a decree in the case of a marriage solemnized before the commencement of this Code, which was valid at the time of solemnization on the ground that a former wife of the male party was living at the time of the marriage.' Sir, I am reading this from the Select Committee Report on the Hindu Code (draft), which was introduced in the Central Legislature. I thought the Hon. Mr. Madhava Menon was referring to this, when he said that there was a similar provision. I suggest, Sir, that what is provided in the Code is reasonable.

"I believe the mover of this Bill has not thought of this particular instance; probably he had in mind only the case of a young couple recently married, i.e., a few days before the commencement of this Act. In the Zamindari Abolition Bill, a clause was put in which invalidated certain transactions which happened prior to the passing of that Bill. Perhaps the mover of this Bill, thought of putting some such provision here."

MR. PRESIDENT:—"I may tell the hon. Member that he has got this point of view; I know it from him. His point is that old wives will not desert their old husbands."

* SRI S. B. ADITYAN:—"Then, why put in this for dissolution? If the mover had been confident of the good sense of old ladies, then he would not have made this provision at all. If on the other hand, he meant that old ladies also, however long they might have lived with their husbands, are entitled to apply for a divorce on reasonable grounds, then he ought to have stated those reasons in the Bill."

"Except for this, I believe that the Bill is a good one; if the amendments are accepted by the mover of this Bill, I think this Bill deserves support."

* SRI R. SURYANARAYANA RAO:—"Mr. President, Sir, after reading the Select Committee Report on the Draft Hindu Code, and the Bill as it has emerged from the Legislative Assembly here, I think, as far as the principles of the Bill are concerned, they are almost the same as those of the Draft Hindu Code. But unfortunately the drafting of the Bill has been a little defective. There are certain variations also which make this Bill defective. Clause 4 (3) states:

If a party to the marriage which is void under sub-section (1) has not completed eighteen years of age at the time of the solemnization of such marriages

The mover of this Bill, has adopted 18 for both the boy and girl; whereas in the Draft Hindu Code, it is 18 for the boy and 14 for the girl.

As regards the grounds for divorce, clause 5 (1) says:

Either party (c) has, without just cause, deserted the petitioner

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“The word ‘desert’ has been defined in the Draft Hindu Code, as otherwise the Law Courts may interpret it in any way they like.

“Then, clause 5, sub-clause (1) (g) says :

... has been suffering from venereal disease in a communicable form for a continuous period of not less than five years immediately preceding the presentation of the petition ...

“To allow a couple, either of whom may be suffering from venereal disease, to continue to live together for five years, is a social danger . . .”

MR. PRESIDENT :—“Dr. Lakshmanaswami Mudaliyar has something to say on that point.”

* SRI R. SURYANARAYANA RAO :—“That is why, Sir, the Hindu Code has mentioned the period as one year. Except for that, this Bill follows in most matters, the principles laid down in that Code. I wish, Sir, that the Select Committee Report on the Draft Hindu Code had been out when this Bill was being considered. If it had been out, I am sure the mover of this Bill would have gladly accepted the language of that Code as it emerged from the Select Committee. Then, he could have avoided all the criticisms in this House, even that of the Leader of the Opposition.

“Mr. Muthuranga Mudaliyar pleaded against the dissolution of marriages on the ground that the Hindu Code as it exists now, or as it is to be enacted—I do not know which he meant . . .”

MR. PRESIDENT :—“I am sure, he meant the Code as it exists now.”

SRI R. SURYANARAYANA RAO :—“Sir, if there had been a provision for divorce in the existing Hindu Law, there was no need at all for Mr. Kaleswara Rao to have brought forward this Bill.”

MR. PRESIDENT :—“Did not the hon. Member listen to the Sanskrit sloka which he quoted?”

* SRI R. SURYANARAYANA RAO :—“He quoted a Sanskrit sloka which meant ‘Marriage is necessary to beget a child, or for what you may call, the creation of a progeny.’ If persons are to enter into a second marriage for the sake of begetting a child, and supposing that the second marriage also proves childless . . .”

MR. PRESIDENT :—“Then a third . . .”

* SRI R. SURYANARAYANA RAO :—“And so on, *ad infinitum*. Sir, I must put in a plea on behalf of the women though it may not be considered good in a polite society to say so. May I ask, Sir, who is to find out the person responsible for childlessness? Why throw the blame only on the woman? By having a second marriage, how can you be sure that the couple will have a child, and a male child too, in order that there may be a *puthra*?

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Therefore, Sir, these are all arguments put forward to support the system which exists now. There is no use of supporting second marriage or third marriage on the ground that it is necessary for having children.

My hon. Friend, the Leader of the Opposition, said that there was no provision anywhere for lunacy being taken as a ground for divorce. In the Hindu Code, the words which have been used are 'habitually of unsound mind'. If my hon. Friend Mr. Kaleswara Rao had had the Select Committee Report on the Hindu Reform Bill, he would certainly have used the words 'habitually of unsound mind', but the words used here are 'has been an incurable lunatic for a continuous period of not less than five years'. The Leader of the Opposition said that he did not want that either party should sever the connexion with the other immediately one of them becomes a lunatic. If there is continuous lunacy on the part of either party for five years preceding the date of the petition, then only it will be urged as a ground for divorce. Mr. Kaleswara Rao's provision is not a liberal provision. It is very conservative both in regard to venereal disease and leprosy and also in regard to lunacy. In every case he has given an interval of five years before any action can be taken by either party.

Sir, the reference to sub-clause (2) made by my hon. Friend Mr. Adityan, is somewhat intriguing. He asked: 'If a second marriage has taken place prior to the coming into effect of this Act and if the first wife happens to be more than 18 years of age, what will prevent her from going to a court of law and asking for divorce?' This cannot be for no reason. It is no pleasure to break the ties of marriage either for a man or for a woman. There must be some grounds. It is no pleasure to go to a court of law and declare, either for the man or the woman, 'We want to part company.' There must be valid reasons. After all, in India whatever may be the case in the West, divorced people are looked down upon. We do not honour them in society as we do not honour drunkards. Divorce is an extreme measure. I do not know what is the case in Western countries; my hon. Friend, the Leader of the Opposition, must be able to tell us having lived in Western society. In India nobody would look upon this kind of divorce with favour. It has some stigma attached to it. My hon. Friend, Mr. Adityan need not feel that an old lady of 50 or 60 years will go to a court of law and ask for divorce on the ground that her husband has got a second wife. But I wish Mr. Kaleswara Rao had followed the precedent in the Hindu Code. Unfortunately it was not available to him.

Sir, unnecessary prejudice has been created against this Bill. I think the prejudice is due to the fact that still man thinks he must rule woman. Every clause says 'either party'. If the right had been given only to women, I can understand men feeling hurt. But the right is given to either party and if man wants he can take action. Both the man and the woman are put on an equal footing and that seems to be the grievance. No exclusive rights are conferred on the woman only. The rights are given to man as well.

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When the parties are not able to get on, instead of allowing them to live a miserable life, it is far better that they part company and lead decent lives somewhere.

“Sir, there is a provision which I wish Mr. Kaleswara Rao had introduced, and to which also my hon. Friend, the Leader of the Opposition, referred, namely, two stages before divorce becomes absolute—judicial separation and divorce, especially on grounds of cruelty. To-day a husband and wife may quarrel; one may be cruel to the other; they go to a court of law. I think in the West they get what is called judicial separation. If within a particular period they are able to come together and live happily making up their quarrels, they continue without obtaining a divorce. But if after a particular time they do not think they can live together, they go to the court and say, ‘We have not been able to live together; so grant us divorce.’ Such a provision is found in the Hindu Code. It has envisaged all the difficulties that we find and I wish that this Bill also had taken into consideration that aspect. However, Sir, when the Bill becomes an Act, it will be short-lived as the Hindu Code is going to take the place of all these reforms. Therefore it is not proper to stop this piece of legislation over which considerable toil and energy have been spent. I do not call it, as I said about the zamindari abolition, that it is a sad story of complicated idiocy. It is a case of an earnest effort for reform to meet certain hard cases of men and women who are forced to live together for want of a provision to break their ties and lead honourable lives. I understand that Mr. Kaleswara Rao has followed only the Bombay example where a similar law has been passed. The Bombay lawyers are, I think, as keen and learned as our learned friends in this House and the other House and it was therefore felt that by copying what was done in Bombay, we would not be infringing any of the laws now existing on the statute or creating fresh difficulties. We may give our approval to this legislation. It is not going to break families. Especially when we give the right of divorce, very few will exercise it, as my hon. Friend, Mr. Madhava Menon, will bear me out that very few exercise the right of divorce in Malabar. With these few words, I support the measure.”

* SRI K. NATARAJAN :—“Sir, every day in my life I utter two verses in the morning along with others. One is invocation to God Vigneswara and the other is the prayer from Kulasekhara Alwar which runs as follows :—

கண்டாரி கழ்வனவே காதலன் தான் செய்திடினான்
கொண்டாரின் யல்லால் அறியாக்கலம்கள் போல
வின்போய் மதில் படை சூழலித்து வக்கோட்டம்மா
கொண்டாளா யாகிலுன் குரைகழலே கூறுவனே.

There are ten stanzas like that one of which speaks of a cruel monarch who ruled over his subjects with an iron hand, but even then his subjects were loyal to him. We are all familiar with the Tyagaraja krithi beginning as follows : ‘Oka bana, oka mata and oka pathni.’ Monogamy is embedded in our culture. Attachment

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to the husband, whatever be his defects is also our Hindu ideal. During the fight for freedom we have been stressing from platforms that our ancient Hindu culture must be restored, except for improvements whenever degeneration has set in. So far as this Bill prohibits bigamy, it keeps to our ancient ideals. I wholeheartedly agree with it. But if we go back to very ancient times, more ancient than the Manu Smrithis, we will find there is one exception made. If the wife is barren, the husband may marry a second time. That does not, in spite of my reverence for the ancient traditions, appeal to me now. As my hon. Friend, Mr. Suryanarayana Rao, has put it, we cannot allocate the blame for barrenness and it may lead to a number of marriages and it may not be quite in consonance with the development of society. It may lead to degeneration in society. But there is one other thing which is encouraged by the Sastras. If the first wife for some reason or other gives her consent to a second marriage, then the second marriage may be permitted. I do not want to exhibit my knowledge of these things. The passages are all extracted in Mayne's Book on Hindu Law. It may be that a girl who has attained the age of 18 years may not be a free agent to give her consent to the marriage of her husband to a second wife. Therefore impose some limit. Allow some six or seven years to lapse and let the girl find out for herself and satisfy herself that she may allow her husband to have a second marriage. According to certain decisions and smrithis, it is permitted that a husband may marry a second time in such cases. I want to refer to these things. But as my hon. Friend Mr. Suryanarayana Rao has pointed out, this Bill is going to be scrapped after the Hindu Code becomes law in the Constituent Assembly. I was also on the point of referring to it, but my hon. Friend, Mr. Suryanarayana Rao, anticipated me, viz., that this Bill is after all 4 p.m. to be modified or scrapped after the Hindu Code or the uniform civil law which is now under consideration in that Assembly comes in. Anyhow, absolute prohibition of bigamy is not countenanced by Sastras; and in so far as this Bill completely obliterates bigamy, it is going too far.

"As regards the other important provision, i.e., divorce, I have stronger objections. As has been pointed out by the learned speakers before me and as was pointed out and conceded by the author of this Bill in his speech in the Legislative Assembly, there are two sets of schools. One is the reform school which really and sincerely aims to introduce changes which are beneficial to society by removing superstitions and bad things. There is the other school, the conservative and the orthodox school whose spirit is to preserve whatever is good for the society. Therefore, any attempt at reform, be it in the way of legislation or be it in the way of issuing flats to society, must aim at bringing about harmony between these two rival schools. There may, of course, be other people who are actuated by some other motives in them. Anyway, I grant there are people on both sides who are actuated by the best of motives. In such a case, what is to be the ideal to be aimed at by a legislation like this, I ask? There are two points which I

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want to press on the attention of this Council so far as divorce is concerned. The first is, taking Hindus as an entity—I am not now on the question whether they could properly include other categories like Buddhists, Jains, etc.—whether belonging to the upper or the lower classes of society or even the tribes, marriage has always been regarded as a sacrament and not as a contractual relationship according to the Western ideal. It is a religious matter according to Hindus. I may go further than Dr. John when he said that divorce is not a matter for individuals, as between husband and wife. He said it was a national and State matter; but I would go further and say it is a religious matter. Therefore, our aim must be to look at it as a sacrament, a religious obligation imposed on the couple at the time of marriage and ordained by our ancient culture. Is that to be interfered with now? So, that point requires consideration. Secondly, too much prominence must not be given to what are called rights in this case between the parties. As between A and B, A may have a right against B where B may have a duty to perform. Can you call the relationship between father and son a right in the legal sense of the word? Can you call the relationship between a brother and brother a right in the legal sense of the word? Again, can you call a relationship between a mother and son a right in the legal sense of the word? Similarly, can you call the relationship between a husband and wife as a right? It may be a right from the ordinary standpoint, but it is a right emanating from a relationship created by a rule of religious law and imposed on the parties as a sacrament. You must view the whole thing not as a simple question of determination of rights, not as a man having a right against the woman or the woman having a right against the man. A father, for instance, has the right to maintain his son and the son has got a right to the father's property. If the father is to have affection for his son, the son also is to do some duty by his father; and in such a case, is it to be called a right? It is an incidence of relationship arising from birth as between these two people, as father and son, which has been imposed by God. Therefore, I say you must view this divorce question from that point of view. Again, take the case of a mother and son; the son has got to maintain the mother under the law; can you put in the same category, the ordinary obligation of the son paying obeisance to his father and mother and satisfying all their tastes? Similarly, between brother and brother. In the case of an undivided Hindu family, it is not a question of right as between brothers; it is the affection which one brother has for the other, the right to look upon the elder brother as a protector, the right of the elder brother to attend to his younger brother's illness, the right of either to go to the rescue of the other when in distress—all that depends on the relationship brought about by nature, imposed by God. Similarly, in the case of the husband and wife; the husband has got certain rights and the wife has got certain rights in law; but those rights do not emanate from the Hindu Law as it is understood; they emanate from the peculiar relationship between the parties. And in the case of husband and

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wife, I go further and say that it is a more intimate, more affectionate and more cordial relationship—not that I mean any disrespect for the relationship between father and son or mother and son and brother and brother—arising out of the bond of union as a result of their marriage”

MR. PRESIDENT :—“ May I tell the hon. Member that the Bill seeks to give a right which is not there at present? ”

SRI K. NATARAJAN :—“ I shall try to answer your question, Sir, I hope, Sir, I have made myself clear about the foundation of my argument, viz., that the rights or limitations of the rights must be determined not on the basis of the bare right as deemed under law, but on the basis of rights arising out of the peculiar relationship as between husband and wife. I shall try to give an illustration here : a husband and wife quarrel for some good, bad or indifferent reasons ; at the time their quarrels begin, they quarrel rather bitterly with each other, and subsequently when the tension becomes a little more, they separate for some time for a temporary period. There is no impediment to their coming together again ; they may afterwards become reconciled to each other at the persuasion of friends, or near relatives of both parties, or at the good offices of members of the village or the society. You cannot define the tendencies of one party towards the other ; I appeal to the experience of all of us, both men and women, on that point—you cannot say that the tendency is one of definite antagonism at any one moment ; it is not a tendency of one saying ‘ good morning, Sir ’ or the other saying ‘ good morning, lady ’ at any moment.”

MR. PRESIDENT :—“ Those love quarrels have been recognized from very ancient times.”

SRI K. NATARAJAN :—“ I am always fortunate in getting the right word from you, Sir. Yes, we do not know whether and when these love quarrels will or will not subside. But why is this Divorce Act introduced, I ask, which enables them to have a separation once for all and does not allow them to patch up their differences? Sir, I have been connected with very many maintenance suits from the year 1902 to 1948”

MR. PRESIDENT :—“ The promoters of this Bill expect lawyers like you to use your good offices and not make them go to court immediately.”

SRI K. NATARAJAN :—“ Without their telling me, I may say it has been my good luck that almost all maintenance suits that came to me have ended only in compromises. I refer to them here not for the purpose of getting credit for it, but for this purpose : If husband and wife quarrel, the wife has to cite witnesses, has to incur expenses, and in claiming maintenance, to make an exaggerated claim, and the husband falsely states that the wife was becoming unchaste, and then the wife says abominable cruelty was her lot from the man, and so on and so forth, and the situation cannot be saved. All this happens after going to court and spending a lot—it may be even *informa pauperis* in some cases, but still

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there is a lot of anxiety and suffering. And what is the reason of all this? It is that there has been something at the bottom, not any absolute antagonism between husband and wife. Supposing in an unguarded moment

MR. PRESIDENT :—“ I think the point you are making is this : that if this Bill is not there, your attempts at compromise will be much easier? ”

SRI K. NATARAJAN :—“ I know of cases where even after ten years of separation, parties have become reconciled. The tension created by these people living apart will be availed of by many people. About twenty days back a suit was decided in my district ; it was a judicial separation case against the husband by a wife ; it was dismissed but what was the motive? It was as I understood that the husband should not get the property—it was a Christian family, the wife had some property. My point therefore is that this divorce should not be made an instrument for use by such people for disrupting the family and bringing about a cleavage further and further which cannot be repaired. I may be told, if there is to be no divorce, have not people got to shift for themselves? I reply : ‘ Is there every day a lot of quarrels in the street? ’ People are shifting for themselves, submitting to their fate ; they will say ‘ all right, I have a husband or wife who is not faithful to me ; that is my fate. ’ But the moment this Bill becomes an Act, there will be scope for lots of cases coming up before the courts and for these people who would otherwise be submitting themselves to fate, saying ‘ I shall now get rid of him or her once for all. ’ ”

MR. PRESIDENT :—“ Exactly the object of the Bill? ”

SRI K. NATARAJAN :—“ The object of the Bill may be different. I say that the result of this Bill will be that, whatever may be the object of this Bill.

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“ Sir, that is not the object of the Bill. The result of the Bill will be that, whatever may be the object of the Bill. This object will be revised for some other purposes. My hon. Friend, Mr. Adityan, raised a point and I was also thinking about the same point in my mind. The point is, can a lady, aged forty years sue for divorce against her husband who is fifty or sixty years old simply because the husband has married again. Sir, there are cases where ladies voluntarily give their consent to their husband to marry a second wife. A man marries his wife and is living with her quite happily. For five years they have no issue. Seeing that she would not beget a child in the near future, she gladly gives consent to her husband to remarry. Thus she is a party to that marriage. Sir, is there any harm in doing so? Why should not this be done? No provision is here in this Bill for such cases. Of course, I can understand clause 5 (1). But I cannot understand clause 5 (2). In clause 5 (2) no reason is given for divorce being claimed.

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“ Sir, in the city, these things may or may not be noticed. But in the villages, these things may create and foster unnecessary factious spirit among the people. Suppose a mirasdar is not keeping peace with his wife. The opposite man who is not in good relation with him, may take this opportunity and create mischief. He may even persuade her to seek the aid of this Bill for divorce, just to annoy him. Sir, by quoting this illustration, I am not saying anything against the intentions of the Bill. Let it not be thought that all husbands and wives are a cantankerous set of cruel people. There are bad people in every walk of life. Therefore, let reformers take note of these things and make a useful contribution to the reform of the society, but not by this legislation.

“ Sir, I ask, before they introduced this measure here, have they taken the public opinion on their side? If so, to what extent? Sir, have they ever visualized that mothers-in-law have adjusted so their treatment towards their daughters-in-law with the result that harmony prevails in every family? Can you think of this state of affairs in a family before 20 years ago? Now this change has come in the minds of every mother-in-law. I say, notions of society have advanced. According to well-known writers and essayists, the test should be whether a particular reform has got the backing of the public opinion. Having got enough materials to show that public opinion is in favour of this reform, they must proceed with the Bill. I once again, ask whether public opinion is elicited in this matter.

“ Sir, when this Bill was published in the papers, I asked some of the ladies, ‘Do you like this reform.’ Do you know, Sir, what reply they gave? They said, ‘This is sin (பாவம்).’ This Bill ought not to be passed into law.”

MR. PRESIDENT :—“ Would you like to hear some of those ladies who were sitting in the Visitor's Gallery on this point? ”

SRI K. NATARAJAN :—“ Sir, I know what they will say on this matter. They are people belonging to this city. They may not be so much concerned. Sir, if I had got enough money, I would have certainly brought those ladies here and made you hear them. But unfortunately, I have not got so much money.”

MR. PRESIDENT :—“ I request you to close your speech.”

* SRI K. NATARAJAN :—“ One thing more and I shall finish. Sir, what is the effect of making a second marriage void as per this Bill? What is the effect on the man's property and what is the effect on the woman's property? I shall raise these points later.”

MR. PRESIDENT :—“ You can raise them when we take up clause by clause.”

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* SRI K. NATARAJAN :—“ Sir, it is a complicated Bill though it has some redeeming features. But so far as divorce is concerned, I am dead against it as it is against the Hindu Law and culture. With these few remarks, I close my speech.”

(The Hon. Dr. T. S. S. Rajan rose from his seat.)

MR. PRESIDENT :—“ Do you want to speak ? ”

THE HON. DR. T. S. S. RAJAN :—“ Sir, if there are other people to speak, let them speak.”

MR. PRESIDENT :—“ Mr. Govindacharyulu is there.”

THE HON. DR. T. S. S. RAJAN :—“ Sir, I will not take a long time.”

MR. PRESIDENT :—“ Yes, you can speak.”

* THE HON. DR. T. S. S. RAJAN :—“ Mr. President, it is not my intention to take part in this debate at all. I find that I am not even fitted for the task. But one thing, I must say. I am not troubled about the intricacies of law contained in this Bill nor about the many issues that have been raised by hon. Members. But I know that marriages do take place and there are husbands and wives among the Hindus and many of them carry on their normal family life even without seeking the help of this Bill. But I am not thinking of that. The trouble is, having been a medical man, I am inclined to say that the very many issues that have been raised here, are somewhat ticklish and to a certain extent, do require some medical opinion. I was once a practitioner and I just recollect to my mind how a man dealt with his wife whom he brought for consultation when I was a doctor. I demanded a good fee—it was an usual thing in those days and I am not ashamed over it—and I asked him, ‘ If your wife has got to be treated by me, well you must pay me so much.’ The man considered my demand and replied : ‘ Please excuse me. I must give you a reply. But the question is, after giving you this amount, the woman I am going to get is the same old wife again I can easily get a young second wife.’ (Laughter.) After saying this, he retired from my consulting room with his wife. And that affected me very much and gave me an inkling of the mentality of the husband towards his wife that she is treated worse than a chattel. Sir, it was only a matter of few rupees which he could have easily afforded for her medical treatment. But he did not fulfil his duty towards his wife and he even went to the extent of saying that he would take another wife instead of spending that amount on his first wife. He did not even wait for my answer and he immediately took away his wife and went out of my consulting room. If I had known that that person would adopt this attitude, perhaps I would have decided to forego my fee. Sir, that impression has not left my mind yet and I could often think of that event and see what an awful state of affairs we are in and the

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mentality of some in our society. This incident shows the amount of neglect and lack of consideration of some husbands towards their wives. That is one thing.

“ The second thing is about the marriage for the sake of progeny. That is a correct thing. But in doing so, you must not be unmindful of the fact that, why should the man be allowed to remarry for the sake of progeny and not the woman. Because, as far as my medical knowledge goes, non-fertility is fifty per cent man's and fifty per cent woman's. I must say this, if I want to be fair to the other sex also. And after all, I can say without any fear of contradiction, that the man is as much responsible for non-fertility as the woman.”

SRI B. NARAYANASWAMI NAYUDU :—“ But it is a man's property.”

* THE HON. DR. T. S. S. RAJAN :—“ I do not consider it a man's property. It is something more than a man's property. Therefore I could not understand it at all.

“ Sir, let me now come to the limitations for diseases and the power given in some of the sections of the Bill, to sue for divorce. I am not at all satisfied either with the time limit placed upon it or the conditions necessary for going for divorce. As far as my medical knowledge goes, I think those provisions are not in keeping with modern scientific ideas. Recently science has made very rapid strides in this direction that diseases which were considered incurable three years ago, have now become curable. Therefore, it is no use putting this limitation of five years for diseases like venereal disease, leprosy, etc. Because I know a man suffering from venereal disease or leprosy can be cured within a few weeks and that is what modern science has taught us. Sir, I do not understand the proposition that because a man is suffering from a disease which ‘ cannot ’ be cured, he is not fit to be a husband. I do not see where this logic comes. For instance, it is said that leprosy can never be cured. As far as I know, the knowledge on ‘ leprosy ’ has gone so rapidly that I would say to this extent that leprosy is not so serious a disease as syphilis. Though leprosy is a chronic disease it can be cured. It is not also such a disease as could be easily contacted from one person to another. Therefore, leprosy disease by itself cannot form a cause for suing for divorce. Therefore that also has got to be considered in terms of modern scientific knowledge.

“ Another factor is this : Children born of lepers are not lepers, and this has been placed on record over and over again. It has also been definitely found out that, if contact of children with leper parents is avoided, the children do not develop leprosy. I admit that leprosy produces some deformity which causes a sense of repulsion in the ordinary man. But it is not really such a danger either to man or to society as it is supposed to be. There are awfully looking cases of leprosy but they do not affect anybody. The definition of leprosy has got to be extended. We are

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yet to know the causes for leprosy, though it has been there from the dawn of history. When science itself is so ignorant, it is not justifiable to provide leprosy as a ground for divorce in a law. I admit that divorce is sometimes necessary not only on the ground of disease but on other grounds as well. The Hindus have been putting with such disabilities for one reason or other. On that ground it cannot be said that the position ought not to be corrected.

"I have not got much knowledge of law. Otherwise I will be very much obsessed with the consciousness of law as my hon. Friend Dr. John is. Not having knowledge of scripture or religion either, I look at the question as a practical man. I myself do not know my religion. I must refer to my father as to whether I am a Hindu. But my father is no more. I myself have become a father . . . (Mr. President: 'The House will be glad to know that you have become a father.') I am not only a father, I am a grand-father and a great-grand-father.

"I was saying that I was looking at the question as a layman and from the practical point of view. This Bill does not provide sufficient legal safeguards which are necessary in an enactment. I say that certainly such safeguards ought to be provided so as to make the Bill safe and complete. Let the Draft Hindu Code become law in course of time. As a temporary measure, I am perfectly willing to have this Bill. This is a measure which is long overdue. Taking the Bill as a whole, I lend my active support to it. I am sure there are many other members who support it. The legal difficulties that have been pointed out have in a way clouded the issue and they might have changed the opinion of some hon. Members. Barring that, I think opinion is more or less unanimous that this Bill requires to be passed."

Sri A. Govindacharyulu began to speak in Telugu. (Some hon. Members: 'Please speak in English.')

K. T. M. AHAMED IBRAHIM SAHIB BAHADUR:—"Mr. President, Sir, are we to understand that once a member speaks in a language, he must always speak in the same language?"

MR. PRESIDENT:—"He has been speaking in two languages, of course not at the same time."

THE HON. SRI K. MADHAVA MENON:—"Section 248 of the Government of India Act, 1935, which says that all the proceedings in the Legislature shall be conducted in English has been deleted in that Act as adapted by the India (Provisional Constitution) Order, 1947."

MR. PRESIDENT:—"That section says that, if a member knows English, he must speak only in English. But it does not allow a member to speak in a different language every time. Once he makes a choice, he must stick to it. That is how I understand the section."

SRI A. GOVINDACHARYULU:—"Mr. President, Sir, this Bill contains two clauses in particular, one enjoining monogamy

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and the other allowing many marriages. The one contradicts the other. If the Bill says that no man shall have more than one wife and no woman more than one husband and leaves the matter at that, certainly every one will support it. *Puthiratha Dharma* and *Eka Pathni Vrata* have been the ideal of Hindu society from Harsha yuga. I say it was only an ideal, for we find in the Atharvana Veda that a woman has got the right to marry a number of times. I would like to place before the House both sides of the question as an impartial man, and then express my opinion."

MR. PRESIDENT:—"I would request you to state your points first and then explain. You know the principles of the Bill. Are you in favour of those principles? If you are not, why do you differ? If you proceed on that manner, we may be able to follow."

SRI A. GOVINDACHARYULU:—"I am not in favour of this Bill and I am for dropping it. Let the Draft Hindu Code prepared by the Rau's Committee become law. I want legislation from the Centre. Such a legislation will take a overall perspective of the Hindu society and apply to all Hindus."

MR. PRESIDENT:—"Why not we bring in necessary measures as long as we have got power?"

SRI A. GOVINDACHARYULU:—"But this is a Bill on which there are bound to be vast differences of opinion."

MR. PRESIDENT:—"You are for the enforcement of monogamy and divorce?"

SRI A. GOVINDACHARYULU:—"I accept monogamy and oppose divorce."

"As I said, from the time of Harsha yuga, women have got the right to marry any number of times. Kautilya's Arthasastra, section 9, slokas 27 and 28, supports my contention. Parasara also has accepted in his Code the remarriage of women."

MR. PRESIDENT:—"When you accept the principle that monogamy should be made applicable to all, I don't think all these references are necessary."

SRI A. GOVINDACHARYULU:—"We do not find any remarriages in the higher classes; we find them only in the lower strata of society. The principle of remarriage has been accepted from the very beginning. Monogamy is civilization and polygamy is non-civilization. [Mr. President: 'Those who remarry are not civilized!'] (Laughter.) Ramayana is accepted by everybody as the Adi Kavya, and it is dated 3,000 B.C. That is the first puranic kavya in Hindu literature. Therein we find that Dasaratha had three wives."

MR. PRESIDENT:—"No, no. He had 350. I have read in the Ramayana that Dasaratha had 350 wives. 'Ardha Saptha Satha'—that is the expression used."

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SRI A. GOVINDACHARYULU :—“ I do not propose to dispute that point, Sir. Of course it is said that Sri Rama was observing Yeka Patni Vratam, that is to say, he never looked even the face of another woman. But we know that King Dasaratha was having three principal wives, besides a number of others. In those days it was the Brahmakarma Law that was in force, but perhaps except in the case of Dasaratha, we have not come across with a man having more than one wife or a woman having more than one husband. But when we come to the age of Mahabaratha, we see that women and men are allowed to marry more than one husband or wife as the case may be. We know that Draupadi married five husbands. There are many instances like that in Mahabaratha. When a person did not produce any children by the first wife, he was allowed to marry a second wife with the consent of the first wife and beget children. (Interruption.) (An hon. Member : ‘ If he cannot produce even by the second wife ! ’) Sir, there may be all sorts of quarrels over this question, and it may be very amusing to read the various theories that existed in this country at various ages, but let us not go into those things at present. Suffice it to say that there has been a gradual evolution in the system of Hindu Marriage and this evolution has taken place from time to time and according to the exigencies of circumstances. We see that this evolution has taken definite shape from the fifth century onwards.”

MR. PRESIDENT :—“ Except perhaps in the single instance of Draupadi, has the hon. Member come across any cases in Puranas where a woman had married more than one husband? ”

SRI A. GOVINDACHARYULU :—“ Even in the Vishnu-purana we have various examples like that, Sir. The marriage system has taken different forms in different ages to suit different circumstances then obtaining. It was always fluid and never rigid. Originally it was the Adibuktha system that was in force and then the Achyuka system that came in and it changed the other.” (Interruption.)

MR. PRESIDENT :—“ I would request the hon. Member to confine himself to the divorce provisions of this Bill and not talk of all those things, which were in existence in ancient times.”

SRI A. GOVINDACHARYULU :—“ Mr. President, let me now confine myself to the system of divorce that was in force in the western countries like England and America. Sir, between 1715 and 1853 A.D., the Parliament alone was competent to grant divorces. Between these two dates, that is during the course of 140 years, we find only 180 cases of divorce in England. (Interruption.) We find much enlightenment on this question of divorce in the Report of the Royal Commission on Divorce, 1912, and at page 11 of that Report the Matrimonial Clauses Act in England has been dealt with at great length, and we get there a lot of information on the subject of divorce and the laws relating to it. In

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America, a country which is known to be a more forward one in these matters, freedom is easily given to women to seek divorce, and we find something very extraordinary there with regard to these divorce laws. (Interruption.)

“ Sir, I shall, with your permission, read an extract from a book entitled, ‘ A History of Marriage and the Family Problems of the Twentieth Century Family in the United States ’, published in 1934. The author of this Book is one Willystine Goodsell, a well-known authority on the subject. Dealing with the problem of divorce, the author states :—

‘ At present the United States stands first among civilized lands in the number of divorces granted annually by its courts. As early as 1885 more marriages were dissolved in this country than in all the rest of the Christian world combined, the figures being as follows : United States, 23,472; Christian Europe, 20,131. Quite as startling is the fact of the rapid increase in divorce in the United States during the past few decades. For example, in the ten years from 1890 to 1900 the number of divorces obtained increased 66·6 per cent over the preceding decade, whereas the population increased only 20·7 per cent. During the thirty year period 1900–1930 the number of divorces granted increased by leaps and bounds, both absolutely and in relation to population growth. In 1900 the courts granted 55,751 divorces, an increase of 8·4 per cent over the preceding year. In 1906 the number of divorces was 72,062, an increase of six per cent over the preceding year; ten years later the number had risen to 112,036. Then came a break in the annual census reports on marriage and divorce probably due to the war and its aftermath. In 1923 the number of divorces had risen to 165,096, a total which is nearly 200 per cent greater than that of 1900 and ten per cent in excess of the preceding year. Seven years later, in 1930, the number of divorces granted had risen to the disturbing total of 191,591; but in 1931, the last year for which census are available, this figure had fallen to 183,664, a loss of 4·1 per cent over 1930. This loss may probably be explained by the financial stringency caused by the depression. However, the number of marriages also fell in 1931 by about 66,000, so that the ratio of divorces to marriages was the highest in the history of the country—17·3 divorces to every 100 marriages, or one divorce to every 5·7 marriages.’

“ After discussing all these things, the author finally draws the following conclusion :—

‘ For many years a large proportion of divorces has been granted to wives, who, apparently, find marriage a more unsatisfying and unhappy relationship than do men. As early as the period 1887–1896 the wife received 65·8 per cent of all divorces granted; and the proportion has steadily risen until in 1931 the wife was granted 72·8 per cent of the divorces and the husband only 27·2 per cent.

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However beneficial divorce may be as a means of ending intolerable marital relationships, it can hardly be questioned that the legal severance of marriage is itself not rarely a source of unhappiness and maladjustment both to married pairs and to children. Like a surgical operation, divorce may put an end to serious evils but leave in its wake obscure ills that are slow in clearing up. Far better than the dubious cure of divorce is that intelligent prevention which prepares young persons for marriage by laying frankly and fully before them the problem and difficulties in that relationship and showing ways of avoiding these pitfalls that others have tried with success.'

"Sir, this is the opinion of the author of this book, who is admittedly a well-known authority on this subject."

MR. PRESIDENT :—“That is the opinion of that gentleman, but not of the American society. I suppose there are many divorces still going on in America, is it not?”

SRI A. GOVINDACHARYULU :—“Yes, Sir, that may be his personal opinion and probably the general opinion of the people in America also. Whatever that may be, Sir, the position of the women in India from the ancient times is described in another book written by one Dr. A. S. Altige, and with your permission, I shall read a few extracts from that book also for the benefit of the House.”

MR. PRESIDENT :—“The hon. Member need not go on reading extracts from books which only express the opinion of the author, and this will only absorb much of the time of the House. If the hon. Member could only give some instances or some law which was passed as a result of these experiences in America, saying that we should not have too many divorces, that would be relevant to the Bill under discussion. If the hon. Member simply quotes a book in favour of some points, I can quote half-a-dozen other authorities to counteract that opinion. I would rather request the hon. Member to give his own opinion on this Bill.”

MRS. MONA HENSMAN :—“May I request the hon. Member for the benefit of the House and as a sort of diversion, to talk in Telugu, Sir.” (Laughter.)

SRI A. GOVINDACHARYULU :—“May I quote the opinion of Mahatma Gandhi on this subject, Sir. He says,—

‘The facility for divorce has proved no protection against a brutal husband for a pliant wife incapable of asserting, and at times even unwilling to assert herself. It is therefore, in the interest of reform for reformers to avoid hysterics and exaggerations.’

“Sir, this is the advice which Mahatma Gandhi has given to a disciple of his, who had written to him a letter explaining the difficulties and miseries which his married sister was put to by her husband.”

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MR. PRESIDENT :—“ That advice is still valid, in spite of this legislation. We do not want to get into hysterics. Is that your view? ”

SRI A. GOVINDACHARYULU :—“ I am afraid, Sir, that in the second part of the Bill, we are getting into hysterics, because once we allow certain things it is human nature to do it always and it is generally part of human nature always to do evil things, when once it is prompted to do it. It is only a man of high character, of strong mind and of great knowledge and experience who can stick on to high morals and high principles. The ordinary man cannot be expected to live up to such high ideals and when once a scope is given to evil ways or bad customs, by means of a social legislation like this, certainly it will catch like wild fire and the whole society will fall into evil ways. So let us not give any scope for divorce by means of this Bill, and bring about unhappiness in our society. Let us wait for some time longer, and let us stay our hands, and leave things to adjust themselves. On the other hand, I must also submit, Sir, that we are not the persons who are competent to bring about changes in the time-worn laws and customs or counteract the law of karma. People's happiness or misery is regulated according to their karma and we are not Rishis who are above karma and who are free from all *Kama* or *Crodha*. Therefore domestic happiness and sorrow will be there, so long as we are animated by such *Kama* or *Crodha*, and no law passed by the legislature can bring about a change in the innate character of the people and if the society is really in need of any reform, it must assert itself and get itself reformed without any pressure of legislation. That is my view, Sir, on this subject.

“ Sir, in spite of there being no law at present, in the lower strata of society and in lower castes, divorce is going on in practice. In certain castes, women marry even when their husbands are alive. Things are going on as they are. About 50 per cent of the Hindu society is already observing the custom of divorce in practice in some form or other. If in certain cases, the marriage is not a happy one, or if the husband takes another wife on account of certain circumstances, any law which is intended to legalise such divorce, will only debase and demoralise society still further.

“ One more point, Sir, and I shall finish. This measure, I believe, is perhaps intended for the educated ladies, because I find that it is they who seem to welcome this measure more than anybody else. It is they who are anxious to get it passed. But I must also submit that in my opinion, it is the educated ladies who will stand to suffer most, if this legislation is passed.”

MRS. MONA HENSMAN :—“ That is an aspersion on the educated ladies, Sir.”

SRI A. GOVINDACHARYULU :—“ I shall explain Sir, how they are bringing difficulties upon themselves.”

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DR. V. K. JOHN :—“ Does the hon. Member suggest that it is the educated ladies who are seeking divorce now? ”

SRI A. GOVINDACHARYULU :—“ This Bill, if it is accepted, Sir, will retard the growth of higher education among ladies.”

THE HON. SRI K. MADHAVA MENON :—“ Does it mean that if the Bill is passed, only divorce will take place and not marriage? ”

SRI A. GOVINDACHARYULU :—“ I do not say that no marriages will take place. They may take place, but not at the proper age. These educated ladies will not be able to get suitable husbands. By the time girls come out of the colleges they will be aged between 22 and 25 and most of the boys would have already been married and they will find no equal match for them to marry or they will find only men younger than themselves to marry. That is the difficulty we are experiencing in our society. Therefore as a matter of fact the girls will only have to be married to a man as a second wife. I know more than a dozen cases in Madras. I know of one case where a lady doctor married a gentleman who has already got five or six children and she is maintaining the whole family and the family is going on amicably. Another lady, a doctor, married an advocate in Madras and the advocate has got already more than six children. Like these I can quote many instances.”

MR. PRESIDENT :—“ The point is that you say that the men must be allowed to marry a second time.”

SRI A. GOVINDACHARYULU :—“ Suppose a girl refuses to marry a man who has already a wife there is no question of this Act at all and no question of second marriage will arise. So, Sir, I entirely oppose the second part of the Bill, namely with regard to divorce and request that at least for some time, until the Rao Committee clears up the whole matter these things may be deferred.”

MR. PRESIDENT :—“ The discussion on the Bill will be continued on the next non-official day. The House will now adjourn to meet tomorrow at 11 a.m.”

The House then adjourned.

IV.—PAPER LAID ON THE TABLE OF THE HOUSE.

* *The Madras Hindu Bigamous Marriages (Prohibition and Divorce) Bill, 1947 as passed by the Assembly and received therefrom in the Council.*